

Appendix A

Statement of Decision

**IN THE MATTER OF THE MARCH 20, 2000,
PETITION BY THE CITY OF HOMER FOR
ANNEXATION OF APPROXIMATELY 25.64
SQUARE MILES**



State of Alaska Local Boundary Commission

Statement of Decision

Members

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Third Judicial District

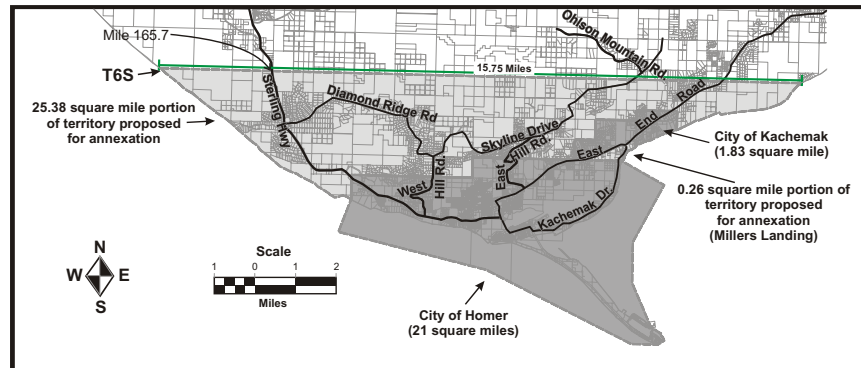
Ardith Lynch
Member
Fourth Judicial District



IN THE MATTER OF THE MARCH 20,
2000 PETITION BY THE CITY OF
HOMER FOR ANNEXATION OF
APPROXIMATELY 25.64 SQUARE
MILES

SECTION I SUMMARY OF PROCEEDINGS

As allowed by Article X, § 12 of the Constitution of the State of Alaska, AS 44.33.812(a)(3), and 3 AAC 110.410, the City of Homer (hereinafter “City”¹ or “Petitioner”) formally initiated efforts on March 20, 2000 to expand its boundaries to encompass an additional estimated 25.64 square miles. The City did so by submitting a petition (hereinafter “Petition”) to the Local Boundary Commission for “legislative review annexation” under Article X, §12 of the Constitution of the State of Alaska, AS 29.06.040(b), and AS 44.33.812(b)(2).



The Petition was accepted for filing by the Alaska Department of Community and Economic Development (hereinafter “DCED”) on March 29, 2000. DCED serves as staff to the Commission under AS 44.33.020(4).

Public notice of the filing of the Petition was given under 3 AAC 110.450. Notice of filing of the Petition was published by the

¹ In its lower case form, the word “city” refers to city governments in general.

Petitioner in the *Homer News*, a newspaper of general circulation in the territory, on April 3, April 10, and April 17, 2000.

DCED arranged for publication of the notice of filing of the Petition on the State of Alaska's Internet Website, *Online Public Notices*.² The notice was also published on the LBC Internet Website maintained by DCED.

As required by 3 AAC 110.450(a)(2), on April 3, 2000, notice of the filing of the Petition was posted at prominent locations readily accessible to the public within the area proposed for annexation. Posting occurred at the following three locations:

1. Village Barabara Texaco Service Station, Mile 169.3 Sterling Highway;
2. Pudgy's Meat & Groceries, Mile 2.4 East End Road; and
3. Northern Enterprises Boat Yard, 42122 Kachemak Drive.

Notice of the filing of the Petition was also posted by the Petitioner at the following five locations within the existing boundaries of the City of Homer on April 3, 2000:

1. Homer City Hall, 491 East Pioneer Avenue;
2. State Courthouse, 3670 Lake Street;
3. United States Post Office, Sterling Highway;
4. Eagle Quality Center, Sterling Highway; and
5. Lakeside Center Shopping Mall, 3858 Lake Street.

On April 3, 2000, notice of the filing was also posted at the Kachemak City Hall. Although the City of Kachemak is outside the proposed boundaries of the City of Homer, the territory petitioned for annexation virtually surrounds the corporate boundaries of the City of Kachemak.

On April 5, 2000, the Petitioner sent a copy of the notice of filing of the Petition to the following nine individuals and organizations:

1. State Representative Gail Phillips;
2. State Senator John Torgerson;
3. South Peninsula Hospital Service Area Board;
4. City of Kachemak;
5. Kenai Peninsula Borough, Mayor's office;
6. Kenai Peninsula Borough Road Service Area;
7. Citizens Concerned About Annexation;
8. City Residents Annexation Process Study Group; and
9. City of Seldovia.

DCED staff sent notice of the filing of the Petition to thirty-nine State officials, including members of the Local Boundary Commission, the heads of principal agencies, and others.

Under 3 AAC 110.460(b), the Petition, including all exhibits, was made available for public review. The City designated the Homer City Hall and Homer Public Library as locations where Petition materials were to be made available to the public.

June 5, 2000 was set by the Commission Chairman as the deadline for filing responsive briefs and written comments in support of or in opposition to the annexation proposal.

² <http://notes.state.ak.us/pn/pubnotic.nsf>

On April 17, April 18, and May 2, 2000, DCED staff attended meetings regarding annexation with various groups in Homer.

Fourteen responsive briefs collectively comprising 147 pages along with 604 pages of exhibits were filed with DCED by the June 5, 2000 deadline.³ The fourteen individuals and organizations that filed responsive briefs are:

Respondent	Representative	Brief	Exhibits
1. Alaskans Opposed to Annexation	Erwin and Erwin, LLC	24 pages	33 pages
2. Cabana, Doris	Same	8 pages	8 pages
3. Dodd-Butters, Sallie	Same	6 pages	0 pages
4. Fuller, Abigail	Same	11 pages	21 pages
5. Griswold, Mary	Same	17 pages	0 pages
6. Jerrel, Vi, Ph.D.	Same	5 pages	23 pages
7. Kachemak Area Coalition, Inc., d.b.a. Citizens Concerned About Annexation	Hicks Boyd Chandler & Falconer	30 pages	511 pages
8. Kenai Peninsula Borough	Same	2 pages	0 pages
9. Objective Annexation Review	Larry Smith	11 pages	0 pages
10. Roberts, Peter	Same	8 pages	0 pages
11. Seelye, Steve and Margret	Same	3 pages	0 pages
12. Smith, Bill	Same	4 pages	0 pages
13. The Crossman Ridge Neighborhood	Cris Rideout	12 pages	8 pages
14. The Raven Ridge Homeowners Association	Wayne Clark	6 pages	0 pages

In addition to the fourteen responsive briefs, a total of 168 timely letters concerning the proposed annexation were received by DCED. The vast majority of the letters expressed opposition to the proposed annexation, three letters expressed support for the proposed change, and others raised issues but did not support or oppose the entire annexation proposal per se.

On June 14 and August 24, 2000, DCED staff attended additional meetings in Homer regarding annexation.

On September 11, 2000, the City of Homer filed its *Reply Brief of the City of Homer Supporting Its Petition for Annexation to the City of Territory West, North, & East of the Current City Limits* (hereinafter “Reply Brief”) in response to the fourteen Responsive Briefs and the 168 written comments.

On July 31, 2001, DCED staff conducted two public informational meetings under 3 AAC 110.520 in Homer. Additionally, on July 31, DCED staff was available to the public to address questions from noon to 10:00 p.m.

³ 3 AAC 110.480(a) provides that “Any interested person or entity may file with the department a responsive brief.”

Forty-seven people attended the first public informational meeting on July 31, which began at 2:00 p.m. Nineteen people attended the second meeting, which began at 7:00 p.m. During both meetings, an opportunity was provided for the public to comment or ask questions about developments relating to the Petition that had occurred since the filing of the City's Reply Brief in September 2000. Most of those offering comments expressed opposition to all, or specific elements of the proposed annexation.

In early October 2001, DCED completed its 412-page *Preliminary Report Regarding the City of Homer's Proposal for Annexation of an Estimated 25.64 Square Miles* (hereinafter "Preliminary Report"). The Preliminary Report recommended amendment of the Petition to limit annexation to approximately 3.3 square miles.

On October 5, 2001, DCED distributed copies of its four-page *Executive Summary of the Preliminary Report Regarding the City of Homer's Proposal for Annexation of an Estimated 25.64 Square Miles* (hereinafter "Executive Summary") to thirty-one interested individuals and individuals and organizations including the Petitioner, respondents, Local Boundary Commission members, State Representative Drew Scalzi, State Senator John Torgerson, City of Kachemak, and Homer-area media.

In addition, those same individuals and organizations were provided a compact disc containing the Executive Summary and DCED's complete Preliminary Report. The Homer City Clerk and the Director of the Homer Public Library were each provided ten copies of the disc for use by the public. DCED also posted a copy of the Executive Summary on the Internet on October 5, 2001.

On October 6, 2001, a printed copy of the 412-page Preliminary Report was mailed to the same individuals and organizations to whom the Executive Summary had been mailed the previous day.

On October 8, 2001, DCED mailed an additional 138 copies of the Executive Summary to interested individuals and organizations. On October 9, 2001, DCED distributed seventy-six printed copies of the Preliminary Report to twelve individuals and organizations. The October 9, 2001 mailing included sixty copies of the Preliminary Report and six additional copies of the CD-ROM sent to the Homer City Clerk for distribution to the Library and City officials.

On October 9, 2001, the Director of the Homer Public Library made available to the public the printed copy of the Preliminary Report mailed by DCED on October 6. Also on October 9, the Library Director made available to the public ten CD-ROM copies of the Preliminary Report, and fifteen copies of the Executive Summary. On October 22, 2001, the Homer Library made twenty-five additional copies of the printed Preliminary Report available to the public.

Between October 5 through October 26, 2001, DCED received requests from the public for five additional copies of the Preliminary Report. DCED promptly fulfilled each request.

Because of the extensive size of the Preliminary Report, it was necessary to post the DCED Preliminary Report on the Internet in increments. DCED staff posted segments of the DCED Preliminary Report, beginning with Chapters 4 and 5, on October 10, October 19, and October 25, 2001.

In total, DCED distributed 268 printed Executive Summaries, 56 CDs containing the Preliminary Report, and 126 printed copies of the Preliminary Report.

The Chairman of the Local Boundary Commission set November 6, 2001 as the deadline for comment on the Preliminary Report. Comments expressing a wide range of views

were received from thirty-two individuals and organizations.⁴ A copy of the comments was made available for public review at the Homer City Clerk's office and the Homer City Library on November 8, 2001.

The Commission scheduled a public hearing on the Homer annexation proposal to begin December 14, 2001. DCED arranged for notice of the hearing to be published in the *Homer News* on November 8, November 22, and December 6, 2001 and in the *Homer Tribune* on November 14, November 28, and December 12, 2001. In addition, DCED arranged for public notice of the hearing to be provided on the State of Alaska *Online Public Notice* system beginning November 5, 2001 and continuing through the date of the hearing.

The notice, draft agenda, statutes and regulations governing hearing and decisional procedures, and guidelines for comments at the hearing were mailed to the Petitioner, respondents, Local Boundary Commission members, Representative Drew Scalzi, Senator John Torgerson, City of Kachemak, and Homer-area media on November 5, 2001.

On November 5, a request for public service broadcast announcements of the hearing was sent to KBBI-AM, the Homer affiliate of the Alaska Public Radio Network. On November 5, 2001, the City of Homer posted the notice of the hearing at the following nine locations:

1. Village Barabara Texaco Service Station, Mile 169.3 Sterling Highway;
2. Pudgy's Meat & Grocers, Mile 2.4 East End Road;
3. Northern Enterprises Boat Yard, 42122 Kachemak Drive;
4. Homer City Hall, 491 East Pioneer Avenue;
5. State Courthouse, 3670 Lake Street;
6. United States Post Office, Sterling Highway;
7. Eagle Quality Center, Sterling Highway;
8. Lakeside Center Shopping Mall, 3858 Lake Street; and
9. Kachemak City Hall.

The City of Homer also made available for public review at the office of the Homer City Clerk and the Homer Public Library the Notice, draft agenda, law governing hearing procedures, law governing decisional procedures, and guidelines for comments.

Notice of the Commission's December hearing in Homer, draft agenda, law governing hearing procedures, law governing decisional procedures, and guidelines for comments at the hearing were posted to the LBC Website⁵ on November 6, 2001.

On November 21, 2001, DCED released its *Final Report Regarding the City of Homer's Proposal for Annexation of an Estimated 25.64 Square Miles* (hereinafter "Final Report"). The timely comments regarding DCED's Preliminary Report were synopsized in DCED's Final Report. The Final Report recommended annexation of approximately 3.9 square miles.

⁴ Some of the thirty-two individuals and organizations submitted multiple sets of comments. Each individual or organization that submitted comments is included only once in the tally of the number (32) who commented on the Preliminary Report. However, if multiple individuals submitted joint comments, for example, married couples submitting a single letter, they were counted separately in the tally.

⁵ <http://www.dced.state.ak.us/mra/LBC/lbcactivities.htm>

119 copies of DCED's Final Report were distributed on November 21, 2001, including sixty copies to the City of Homer for distribution to staff, office of the Homer City Clerk, and Homer Public Library. On that same date, DCED distributed an executive summary of the Final Report to 125 individuals and organizations.

On December 13, 2001, before the hearing, four currently appointed members of the Commission inspected the 25.64 square miles proposed for annexation by helicopter and automobile.

The Commission convened its public meeting on the City's annexation proposal on December 14, 2001 at the Mariner Theater in the Homer High School at approximately 9:00 a.m. The entire hearing was broadcast live on local radio station KBBI.

After introductory remarks by the Commission Chairman, DCED summarized its reports and recommendations concerning the Homer annexation proposal to the Commission.

The opening statement of the Petitioner followed DCED's summary. Gordon Tans, Attorney for the City of Homer, made the opening statement on behalf of the Petitioner. The City of Homer did not follow its opening statement with sworn testimony by witnesses.

After the Petitioner's opening statement, opening statements were made by the following respondents:⁶

1. Peter Roberts;
2. Alaskans Opposed to Annexation (Vi Jerrel);
3. Kenai Peninsula Borough (Colette Thompson, Borough Attorney);
4. Objective Annexation Review (Michael Kennedy);
5. The Crossman Ridge Neighborhood (Cris Rideout);
6. Abigail Fuller;
7. Steve and Margaret Seelye (Margaret Seelye);
8. Sallie Dodd Butters;
9. Raven Ridge Homeowners Association (Billy Pepper);
10. Mary Griswold; and
11. Citizens Concerned About Annexation (Peter Roberts).

The opening statements by respondents were followed by sworn testimony provided by five witnesses called by two respondents. Sallie Dodd Butters called Charles Davis as a sworn witness, while Citizens Concerned About Annexation called Abigail Fuller, Dennis Oakland, Milli Martin, and Lee Krumm as sworn witnesses.

The City of Homer did not call witnesses to provide sworn responsive testimony.

⁶ There are fourteen respondents; eleven of whom made opening statements. Vi Jerrel made an opening statement on behalf of Alaskans Opposed to Annexation but did not make an opening statement as a respondent in her own right. Respondents Bill Smith and Doris Cabana were not present.

Following the sworn testimony of witnesses called by the respondents, the hearing was opened for a period of comment by the general public. Public comment was received during that segment from the following individuals:

1. Laura Barton
2. Ed Cooley
3. Eileen Becker
4. Jim Reinhart
5. Lois H. Field
6. Mike Ryan
7. Paul Field
8. Terry Jones
9. Randel Jones
10. Linda Reinhart
11. Timothy Fuller
12. Patricia Brennan
13. Rick Harness
14. Charles Davis
15. Milli Martin
16. Mike Arno
17. Kari Arno
18. Roberta Harris
19. Roberta Highland
20. Patti Krumm
21. Diana Walrath
22. Billy Pepper
23. Rich Corazza
24. Sonja Corazza
25. Roy E. Hoyt, Jr.
26. Nancy Hillstrand
27. Daniel Boone
28. Rick Ladd
29. Joanne Gregory
30. Mary Deihl
31. Geo Beach
32. Carey Meyer
33. Poppy Benson
34. Daisy Lee Bitter
35. John Fowler
36. Douglas Frainan
37. Gary Lyon
38. Kurt Weichhan
39. Scott Adams
40. Diane Sedor
41. Leah Handley
42. Al Wadell
43. Ed Todd
44. Marilyn Hendren
45. Michael A. Lemay
46. Madrene Hoyt
47. Rieta Walker
48. David Rowe
49. Anita Critchett
50. Gail Ammerman
51. Paul Seaton
52. Hellen Buckwalter
53. Hardin Terrell
54. Findlay Abbott

At the conclusion of the comments by Findlay Abbott, no one else came forward to speak under the comments from the general public segment of the hearing. Respondent Sallie

Dodd Butters requested and was granted permission to give her closing statement at that time.

After the closing statement from Sallie Dodd Butters, the Commission Chairman asked if anyone else from the general public wished to offer comment. The following two individuals came forward:⁷

- 55. Susan Jackson
- 56. Wendy Lefton

After the comments by Wendy Lefton, the Commission Chairman recessed the hearing at approximately 8:20 p.m. The hearing reconvened at the Mariner Theater on Saturday, December 15 at approximately 9:15 a.m. At the invitation of the Commission Chairman, the following seven individuals came forward to offer comments from the general public:⁸

- 57. Bob Barnett
- 58. Kathy Hill
- 59. Don Darnell
- 60. Mike Yourkowski
- 61. Michael Kennedy
- 62. Harry Wilson
- 63. Robert Archibald

Following the comments from Robert Archibald, the Petitioner presented its closing statement. Gordon Tans made the statement on behalf of the City of Homer.

The closing statement by the Petitioner was followed by closing statements from the following ten respondents:⁹

- 1. Peter Roberts;
- 2. Alaskans Opposed to Annexation (Vi Jerrel);
- 3. Vi Jerrel;
- 4. Objective Annexation Review (Michael Kennedy);
- 5. The Crossman Ridge Neighborhood (Cris Rideout);
- 6. Abigail Fuller;
- 7. Steve and Margaret Seelye (Margaret Seelye);
- 8. The Raven Ridge Homeowners Association (Billy Pepper);
- 9. Mary Griswold; and
- 10. Citizens Concerned About Annexation (Peter Roberts).

The hearing concluded at approximately noon on December 15. Following the hearing the Commission convened a decisional session lasting approximately two hours. Guided by the fourteen city annexation standards set out in State law, the Commission determined during the decisional session that it would be appropriate to limit the size of the annexation at this time to an area estimated to comprise 4.58 square miles. Accordingly, the Commission amended the Petition to reduce the territory proposed for annexation from 25.64 square miles to an estimated 4.58 square miles. Section II of this Statement of Decision sets out the basis for the Commission's action. A legal description and a map of the 4.58 square miles approved for annexation are included in Section III of this Statement of Decision.

⁷ Numbering is continued sequentially from Findlay Abbott.

⁸ Numbering is continued sequentially from Wendy Lefton.

⁹ As noted previously, there were fourteen respondents in this proceeding. Respondent Sallie Dodd Butters made her closing statement on December 14. Respondents Kenai Peninsula Borough, Bill Smith, and Doris Cabana were not present at this segment of the hearing.

SECTION II FINDINGS AND CONCLUSIONS

Based on the voluminous evidence¹⁰ in this proceeding, which the Commission finds to be suitably complete to render a well-informed decision, the Commission reached the following findings and conclusions:

A. Compatibility of the Character of the Territory Proposed for Annexation and the Area within the Existing Boundaries of the City.

The compatible territory standard is in 3 AAC 110.100.¹¹ DCED addressed that standard on pages 161 – 200 of its Preliminary Report.

The 4.58 square miles approved for annexation by the Commission are more similar in character to the area within the existing boundaries of the City of Homer than is the 25.64 square miles petitioned for annexation.

Properties closest to the existing northern boundaries of the City of Homer and along the major roadways are generally divided into smaller parcels and are developed to a greater degree than the remainder of the territory petitioned for annexation. That is not to imply, however, that the entire 25.64 square miles petitioned for annexation is incompatible in character with the area inside the existing boundaries of the City of Homer.

Residential development is the predominant land use within the 25.64 square miles petitioned for annexation. The entire territory petitioned for annexation contains an estimated 870 housing units.

There is significant commercial development in portions of the territory petitioned for annexation, notably Millers Landing and the area along the Sterling Highway within the 4.58 square miles approved for annexation. The City estimated that \$14 million in annual taxable sales occur within the 25.64 square miles petitioned for annexation. However, that estimate reflects only 80% of the taxable sales reported in the territory (excluding Kenai Supply) for 1999 – actual taxable sales were approximately \$17.6 million in 1999.

The area within the existing boundaries of the City of Homer is the regional center for State, federal, and borough offices. However, there are also a number of governmental facilities within the 25.64 square miles petitioned for annexation along the Sterling

¹⁰ The evidence includes the Petition, Responsive Briefs of the fourteen respondents, written comments on the Petition from 168 correspondents, Reply Brief, Preliminary Report, written comments on the Preliminary Report from 32 correspondents, Final Report, observations made by the Commission during its December 13, 2001 helicopter and automobile tours of both the territory petitioned for annexation and the area within the City of Homer, and statements, testimony and comments made at the public hearing concerning this matter conducted by the Commission on December 14 and 15, 2001.

¹¹ 3 AAC 110.100 provides as follows:

The territory must be compatible in character with the annexing city. In this regard, the commission will, in its discretion, consider relevant factors, including the

- (1) land use and subdivision platting;
- (2) salability of land for residential, commercial, or industrial purposes;
- (3) population density;
- (4) cause of recent population changes; and
- (5) suitability of the territory for reasonably anticipated community purposes.

Highway, Diamond Ridge Road, and Skyline Drive. Many of those facilities lie within the 4.58 square miles approved for annexation by the Commission.

The 25.64 square miles petitioned for annexation is generally higher in elevation than the area within the current boundaries of the City of Homer. However, this distinction does not render the two areas incompatible. There is no shortage of property for sale in the 25.64 square miles petitioned for annexation or within the existing boundaries of the City of Homer.

The population density within the City of Homer (including both land and water) is 188 residents per square mile. Excluding water, the City of Homer population density is 359 residents per square mile. In comparison, the population density of the 25.64 square miles petitioned for annexation is eighty-six persons per square mile. The population density of the 4.58 square miles approved for annexation by the Commission is 196. The latter figure is 12.6% greater than the comparable figure for the average of all city governments in Alaska.

There has been significant development in the 25.64 square miles petitioned for annexation; more than \$25 million in taxable property improvements have been undertaken since 1995. Many of those improvements occurred within the 4.58 square miles approved for annexation.

The per capita value of taxable real property within the existing boundaries of the City of Homer is estimated to be \$58,527. In comparison, the per capita taxable value of real property in the 25.64 square miles petitioned for annexation is estimated to be \$60,238. The per capita taxable value of property in the 4.58 square miles approved for annexation by the LBC is estimated to be \$64,994. The per capita value for the 4.58 square miles approved for annexation is 7.9% greater than the comparable figure for the 25.64 square miles as a whole and 11.0% greater than the figure for the area within the City of Homer. These data show that the area approved for annexation encompasses valuable properties and substantial development.

Property taxes in the 25.64 square miles petitioned for annexation, except Millers Landing, are 2.75 mills lower than they are within the City of Homer. Property taxes in Millers Landing are 4.58 mills lower than they are in the City of Homer. Sales taxes throughout the territory petitioned for annexation are 2%; sales taxes within the City of Homer are 5.5%.

It is likely that residents of the 25.64 square miles petitioned for annexation travel throughout both the areas within the existing boundaries of the City and the territory petitioned for annexation for routine purposes such as those related to employment and to purchase of goods and services.

The record clearly demonstrates that the 25.64 square miles petitioned for annexation and the City of Homer are one organic community separated by the invisible corporate boundaries of the City of Homer.

The Commission concludes that both the 25.64 square mile territory petitioned for annexation by the City of Homer and the 4.58 square mile area approved for annexation by the Commission are compatible in character with the territory within the City's current boundaries. Thus, the standard set out in 3 AAC 110.100 is satisfied for both areas. Again, the 4.58 square mile area approved for annexation is more similar in character with the territory currently within the corporate boundaries of the City of Homer.

B. Proposed New Boundaries of the City of Homer in Relation to Boundaries of other Existing Local Governments.

The standard at issue is in 3 AAC 110.130(e).¹² DCED addressed this standard on pages 201- 202 of its Preliminary Report.

The proposed expanded boundaries of the City of Homer are entirely within the corporate limits of the Kenai Peninsula Borough. Moreover, although the proposed expanded boundaries of the City of Homer adjoin the corporate limits of the City of Kachemak, they do not overlap the jurisdictional area of any existing city government.

The Commission concludes from the foregoing that the City of Homer annexation proposal (both with and without the boundary amendment by the Commission) clearly satisfies the overlapping boundary standard set out in 3 AAC 110.130(e).

C. Contiguity of the Territory with the City of Homer.

The contiguity standard is in 3 AAC 110.130(b).¹³ DCED addressed this standard on pages 203 – 204 of its Preliminary Report.

The Commission finds that, with respect to this standard, the 25.64 square miles petitioned for annexation to the City of Homer is contiguous to the area within the existing boundaries of the City of Homer. The 4.58 square miles approved for annexation by the Commission are also contiguous to the current corporate boundaries of the City of Homer.

The Commission concludes from the simple facts relating to this standard that the Petition plainly satisfies the requirement of 3 AAC 110.130(b), as does the territory approved for annexation by the Commission.

D. Effects of Annexation on Civil and Political Rights.

The civil and political rights standards are in 3 AAC 110.910, 42 U.S.C. § 1973, and 28 C.F.R. PART 51.1.¹⁴ DCED addressed this standard on pages 204 – 213, 363, and 364 of its Preliminary Report and pages 23 – 26 and 34 of DCED’s Final Report.

¹² 3 AAC 110.130(e) provides as follows:

If a petition for annexation describes boundaries overlapping the boundaries of an existing organized borough, unified municipality, or city, the petition for annexation must also address and comply with the standards and procedures for either annexation of the enlarged city to the existing organized borough, or detachment of the overlapping region from the existing organized borough, unified municipality, or city. The commission will consider and treat the annexation petition to the existing organized borough, or a detachment petition from the existing organized borough, unified municipality, or city.

¹³ 3 AAC 110.130(b) provides as follows:

Absent a specific and persuasive showing to the contrary, the commission will, in its discretion, presume that territory that is not contiguous to the annexing city does not meet the minimal standards required for annexation

¹⁴ 3 AAC 110.910 provides that:

A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

42 U.S.C., § 1973 provides that:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color,

The anticipated effects of annexation on civil and political rights include the following:¹⁵

Right	Effect	Area Affected
To hold appointed office as a member of the board of supervisors of the Kenai Peninsula Borough Road Service Area	Loss of right	All annexed areas
To hold elected office as a member of the board of supervisors of the Kenai Peninsula Borough Kachemak Emergency Service Area	Loss of right	All annexed areas excluding Millers Landing
To hold office as a member of the Kachemak Bay Advisory Planning Commission	Loss of right	All annexed areas excluding Millers Landing

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or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

28 C.F.R. PART 51.1 provides that:

(a) Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, prohibits the enforcement in any jurisdiction covered by Section 4(b) of the Act, 42 U.S.C. 1973b(b), of any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date used to determine coverage, until either:

(1) A declaratory judgment is obtained from the U.S. District Court for the District of Columbia that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, or

(2) It has been submitted to the Attorney General and the Attorney General has interposed no objection within a 60-day period following submission. Additionally, State law provides with respect to annexation that, "A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin."

¹⁵ Black's Law Dictionary (Revised Fourth Edition) defines "civil rights" and "political rights" as follows:

Civil rights are such as belong to every citizen of the state or country, or, in a wider sense, to all of its inhabitants, and are not connected with the organization or administration of government. They include the rights of property, marriage, protection by the laws, freedom of contract, trial by jury, etc. Or, as otherwise defined, civil rights are rights appertaining to a person in virtue of his citizenship in a state or community. Rights capable of being enforced or redressed in a civil action. Also a term applied to certain rights secured to citizens of the United States by the thirteenth and fourteenth amendments to the constitution, and by various acts of congress made in pursuance thereof.

Political rights consist in the power to participate, directly or indirectly, in the establishment or administration of government, such as the right of citizenship, that of suffrage, the right to hold public office, and the right to petition.

Table continued from previous page

Right	Effect	Area Affected
To propose and enact laws of the City of Homer through the initiative process	Gain of right	All annexed areas
To approve or reject laws of the City of Homer through the referendum process	Gain of right	All annexed areas
To vote on propositions (e.g., bonds) submitted to the voters of the City of Homer	Gain of right	All annexed areas
To hold any appointed office (e.g., Planning Commission) of the City of Homer*	Gain of right	All annexed areas
To hold any elected office (i.e., mayor or city council) of the City of Homer	Gain of right	All annexed areas

The most significant effect of annexation in terms of political rights is that resident voters in the annexed area will be granted the right to participate in future elections regarding electing City officials and other City matters. The hundreds of voters in the territory approved for annexation will be a major political force in the expanded City of Homer.

Further, residents of 25.64 square miles petitioned for annexation generally pay sales taxes to the City. In addition, the City of Homer has great influence on the daily lives of many in the territory petitioned for annexation in other matters such as the availability of water, public health and safety, and commerce. Annexation would enfranchise such residents and, therefore, provide them with a direct and tangible voice in determining City policies.

Evidence does not show that annexation will affect any civil or political right of any person within the territory petitioned for annexation “because of race, color, creed, sex, or national origin.”¹⁶ Moreover, annexation will not result in the imposition or application of voting qualifications, voting prerequisites, or standards, practices, or procedures to deny or abridge the right to vote on account of race or color or because a person is a member of a language minority group.

Therefore, the Commission concludes that the requirements of 3 AAC 110.910; 42 U.S.C. § 1973, and 28 C.F.R. PART 51.1 are satisfied by the City of Homer’s annexation proposal (both with and without the boundary amendment made by the Commission).

In addition to matters relating to the standards set out in 3 AAC 110.910, 42 U.S.C. § 1973, and 28 C.F.R. PART 51.1, three other prominent “political rights” issues were raised in this proceeding.

First, a number of those who provided written comments and testimony expressed the view that it is a basic civil and political right to vote on annexation. However, such is not the case. In 1962, the Alaska Supreme Court held that the legislative review process for

¹⁶ Respondent Sallie Dodd Butters testified during the hearing that, “My spiritual and rural lifestyle is my creed, so I contend I am being discriminated against.” The Commission prefers the more generally accepted definition of “creed” set out as follows in Black’s Law Dictionary (Revised Fourth Edition):

The word “creed” has been defined as “confession or articles of faith,” “formal declaration of religious belief,” “any formula or confession of religious faith,” and “a system of religious belief.”

annexation – the same one employed in this proceeding by the City of Homer – does not infringe upon or deprive rights protected by the Fourteenth Amendment of the U.S. Constitution.¹⁷ Specifically, the Court stated as follows in *Fairview Public Utility District Number One v. City of Anchorage*, 368 P.2d 540, 545 (Alaska 1962):

Appellants next contend that their constitutional rights were violated when they were not permitted to hold an election and vote as to whether annexation should take place. They rely specifically on the due process clause of the Fourteenth Amendment, and on the Fifteenth Amendment as applied in the recent case of *Gomillion v. Lightfoot*.¹⁸

Appellants do not point out, nor do we perceive, in what respect there has been a deprivation of ‘liberty, or property, without due process of law.’¹⁹ The determination of what portions of a state shall be within the limits of a city involves an aspect of the broad political power of the state which has always been considered a most usual and ordinary subject of legislation.²⁰ The state may permit residents of local communities to determine annexation questions at an election. But when this has been done, the state is not irrevocably committed to that arrangement. If the citizens of the state, in adopting a constitution, decide that it is in the public interest to establish another election procedure, there is no constitutional obstacle to that course of action. Those who reside or own property in the area to be annexed have no vested right to insist that annexation take place only with their consent. The subject of expansion of municipal boundaries is legitimately the concern of the state as a whole, and not just that of the local community.²¹ There has been no infringement or deprivation of rights protected by the Fourteenth Amendment.

The Fifteenth Amendment and the Supreme Court’s decision in the *Gomillion*²² case are not pertinent. They are concerned with the denial of a citizen’s right to vote because of his race or color. That factor is not involved in this case.

The more recent ruling of the Alaska Supreme Court in *Area G Home and Landowners Organization, Inc., v. Anchorage*, 927 P 2d 728 (Alaska 1996) is also relevant to this issue. That case lends further support to the Commission’s view that that courts would disagree with the proposition espoused by some in this proceeding that there is a constitutionally or statutorily recognized right to vote on annexation which would effectively grant voters the right to veto the pending annexation proposal.

Additionally, in 1881, the U.S. Supreme Court ruled in *Kelly v. City of Pittsburgh*, 104 U.S. 78 (1881), that a taxpayer whose land had been annexed without his vote, was not deprived of due process of law. Specifically, the court said:

What portion of a State shall be within the limits of a city and be governed by its authorities and its laws has always been considered to be a proper subject of legislation. ... Whether territory shall be governed for local purposes by a county, a city, or a township organization, is one of the most usual and ordinary subjects of State legislation.

¹⁷ § 1, Amendment XIV of the U.S. Constitution provides as follows:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

¹⁸ 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960).

¹⁹ U.S.Const. amend. XIV, § 1.

²⁰ *Kelly v. City of Pittsburgh*, 104 U.S. 78, 81, 26 L.Ed. 658, 659 (1881); 1 Antieau, Municipal Corporation Law § 1.15 at 30 (1958).

²¹ Cf. *Hunter v. City of Pittsburgh*, 207 U.S. 161, 28 S.Ct. 40, 52 L.Ed. 151 (1907); *Mount Pleasant v. Beckwith*, 100 U.S. 514, 524–525, 25 L.Ed. 699, 701 (1880).

²² *Gomillion v. Lightfoot*, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960).

The second prominent political rights issue involves a statutory right of voters in certain service areas to ratify any adjustment to the boundaries of those service areas under AS 29.35.450(c).²³ In this case, the service areas in question consist of the Kenai Peninsula Borough Road Service Area (hereinafter “KPBRSA”) and the Kenai Peninsula Borough Kachemak Emergency Service Area (hereinafter “KESA”).

The Commission, DCED, and the State Attorney General’s Office are in accord that AS 29.35.450(c) does not apply to a legislative review annexation on the basis of principles set out in Alaska’s Constitution, including those addressed in the *Fairview* and *Area G Home and Landowners Organization* cases noted above.²⁴ If AS 29.35.450(c) applied to a legislative review annexation, it could result in a circumstance in which two local governments – in this case the City of Homer and the Kenai Peninsula Borough – were exercising the identical powers in the same territory. Such would contravene principles in Alaska’s Constitution, particularly those set out in Article X, § 1, which promote “a minimum of local government units” and “prevent duplication of tax-levying jurisdictions.”

In the landmark *Fairview* case, the Alaska Supreme Court held in a similar circumstance that although State statutes expressly provided that a public utility district could be dissolved only upon approval of the voters, annexation of the territory to a city would also result in dissolution of the district. Specifically, the Court stated (at 545):

Appellants contend that the District was not dissolved when annexation took place; that this could be accomplished only by the election procedure set forth by statute.²⁵ We disagree. This would defeat the chief purpose of annexation, which was to do away with two separate governments in a single community, and thus avoid multiplication of facilities and services, duplication of tax burdens, and inevitable jurisdictional conflict and chaos.²⁶ When annexation was effected the District was extinguished, and its property, powers and duties were then vested in the city.²⁷

It is the view of the Commission that annexation of territory to the City of Homer will, as a matter of law, result in the detachment of any such area within KPBRSA and KESA from those respective service areas of the Kenai Peninsula Borough.

²³ AS 29.35.450(c) states as follows:

If voters reside within a service area that provides road, fire protection, or parks and recreation services, abolishment of the service area is subject to approval by the majority of the voters residing in the service area who vote on the question. A service area that provides road, fire protection, or parks and recreation services in which voters reside may not be abolished and replaced by a larger service area unless that proposal is approved, separately, by a majority of the voters who vote on the question residing in the existing service area and by a majority of the voters who vote on the question residing in the area proposed to be included within the new service area but outside of the existing service area. A service area that provides road, fire protection, or parks and recreation services in which voters reside may not be altered or combined with another service area unless that proposal is approved, separately, by a majority of the voters who vote on the question and who reside in each of the service areas or in the area outside of service areas that is affected by the proposal. This subsection does not apply to a proposed change to a service area that provides fire protection services that would result in increasing the number of parcels of land in the service area or successor service area if the increase is no more than six percent and would add no more than 1,000 residents.

²⁴ See the December 12, 2001 memorandum from Marjorie Vandor, Assistant Attorney General (File Number 663-02-0091), and the November 7, 2001 memorandum from Debby Sedwick, Commissioner of DCED, requesting the opinion.

²⁵ Section 49-2-13 ACLA Cum.Supp.1957, *supra* note 8.

²⁶ *In re Annexation to City of Anchorage*, 15 Alaska 504, 509, 129 F.Supp. 551, 554 (D.Alaska 1955).

²⁷ *In re Sanitary Board of East Fruitvale Sanitary Dist.*, 158 Cal. 453, 111 P. 368, 370 (1910); *Dickson v. City of Carlsbad*, 119 Cal.App.2d 809, 260 P.2d 226 (1953).

The third additional prominent civil and political rights issue relates to truncation of terms of incumbent elected officials of the City of Homer. A number of those who provided written comments and testimony advocated truncation of terms of incumbent elected officials of the City of Homer as a condition of annexation.

The issue of truncation of terms of incumbent elected officials was addressed on pages 210 – 213, 363, and 364 of the Preliminary Report and on pages 23 – 26 and 34 of the Final Report. As outlined below, the terms of three of the seven incumbent elected officials of the City of Homer – 43% of the total – will expire approximately seven months after the presumed effective date of annexation (mid-March 2002). The terms of two others will expire nineteen months after annexation, while the terms of the remaining two incumbents will expire thirty-one months after annexation.

INTERVAL BETWEEN ANNEXATION OF EXPIRATION OF TERMS OF INCUMBENT ELECTED OFFICIALS		
Occurrence	Date	Interval Since Annexation
Assumed effective date of annexation	March 2002	
Expiration of current term of Mayor Cushing	October 2002	7 months
Expiration of current term of Council member Marquardt	October 2002	7 months
Expiration of current term of Council member Cue	October 2002	7 months
Expiration of current term of Council member Kranich	October 2003	19 months
Expiration of current term of Council member Ladd	October 2003	19 months
Expiration of current term of Council member Fenske	October 2004	31 months
Expiration of current term of Council member Yourkowski	October 2004	31 months

There are two essential questions with respect to the matter of truncation of terms. The first is whether the Commission has the authority, absent express statutory or regulatory provisions, to require truncation of terms as a condition of annexation. The second is – assuming the Commission has such authority – whether the facts in this proceeding warrant the imposition of such a condition.

Taking up the latter question first, the Commission acknowledges, in a broad sense, that the arguments for truncation of terms of elected officials of an annexing municipality hold some attraction. It is less than ideal that residents of newly annexed areas may, for varying periods, be represented at the local municipal level by officials they did not elect. The Commission notes, however, that the same occurrence results from a variety of reasons other than annexation (e.g., citizens reaching the age of eighteen, individuals relocating to a new local government jurisdiction, and the appointment of an individual to serve in a position vacated by an elected official).

The Commission, however, disagrees with certain fundamental characterizations made by advocates for truncation in this case. For example, despite characterizations to the contrary, newly annexed citizens would clearly not lack representation by the incumbents. Incumbent elected officials, all of whom are elected and serve at large, would represent all citizens of the City of Homer, including every newly annexed citizen.

The Commission is unaware of any precedent for the truncation of terms of incumbent elected local government officials as a result of annexation. Given such, prudence is warranted on the part of the Commission in addressing the matter. The Commission notes that the fundamental argument for truncation of terms applies whether one citizen is annexed or, as in this case, several hundred citizens may be annexed. Moreover, a similar argument could be made regarding municipal detachment, where citizens are excluded from a municipality. For example, citizens of the remnant municipality could ask, “Why should anyone who is no longer a citizen of a municipality have had a voice in determining who is going to govern us for the next two and one-half years?” Truncation of the terms of incumbent elected officials for annexation or detachment of any inhabited property, regardless of the size of the population, is impractical.

The Commission does not consider the specific facts in this case to warrant the extraordinary and unprecedented step of truncating terms of elected officials, particularly with respect to the 4.58 square mile area approved for annexation. Limiting the size of the annexation to the 4.58 square miles approved by the Commission would increase the population of the City of Homer by an estimated 898 residents. Those individuals would constitute 18.5% of the post-annexation population of the City of Homer. In contrast, if the proposal to annex 25.64 square miles were approved, the estimated 2,204 residents therein would comprise 35.8% of the population of the expanded City. In the latter case, arguments favoring truncation of terms of incumbent elected officials would be much stronger.

Because the facts in this proceeding do not warrant the extraordinary and unusual step of truncation of terms, the Commission declines to address the question of whether the Commission has the authority to impose such a condition in the absence of a statute or regulation which addresses truncation of terms.²⁸

E. Inclusion of Geographical Regions and Large Unpopulated Areas.

The relevant standard is found in 3 AAC 110.130(d).²⁹ DCED’s analysis and conclusions regarding this standard are set out on pages 213 – 219 of its Preliminary Report. Additional information relevant to this particular standard is provided on pages 5 – 19 and 32 – 34 of DCED’s Final Report.

The City of Homer is currently the eleventh most populous city government in Alaska. The existing City of Homer ranks forty-fifth among Alaska’s 146 cities in terms of the area within its corporate boundaries. Excluding water, the City of Homer ranks sixty-first among all city governments in Alaska.

If all 25.64 square miles were annexed to the City of Homer, it would become the nineteenth highest ranked city in terms of area. Excluding water, it would rank twentieth in total area. However, again, its ranking in terms of population would exceed its ranking in terms of area, given that it would then become the fifth most populous city in Alaska.

The population within the expanded City of Homer boundaries approved by the Commission is estimated to be 4,844. That would make the enlarged City of Homer the seventh most populous city government in Alaska. With approximately 15.58 square miles of land and ten square miles of water within its expanded corporate boundaries, the City of Homer would rank as the sixty-first largest city in Alaska. Excluding water, the expanded City of Homer would rank as the forty-eighth largest city in Alaska. Clearly,

²⁸ Nevertheless, the Commission notes that State Assistant Attorney General Marjorie Vandor issued a memorandum dated December 12, 2001 (File Number 663-02-0090) concluding that “. . . the LBC does not, absent regulations, have discretionary authority to require truncation of terms of the city council of Homer as a condition to approving the petition for annexation presently being considered.”

²⁹ 3 AAC 110.130(d) states as follows:

The proposed boundaries of the city must not include entire geographical regions or large unpopulated areas, except when boundaries are justified by the application of the standards in 3 AAC 110.090 - 3 AAC 110.130.

the area within the expanded corporate boundaries of the City of Homer approved by the Commission is modest in relation to its population compared to other city governments in Alaska.

Portions of the 25.64 square miles petitioned for annexation to the City of Homer encompass large parcels. Moreover, several portions of the territory are uninhabited. However, the extent of such in the 4.58 square miles approved for annexation is substantially less than the remnant territory petitioned for annexation. Moreover, the standard set out in 3 AAC 110.040(c) is aimed at prohibiting the annexation of a vast borough-type region to a city government. The standard does not preclude city governments from annexing territory that is only partially inhabited. Neither does 3 AAC 110.040(c) preclude the annexation of territory encompassing undivided parcels of land.

Under these circumstances, the Commission concludes that the standard found in 3 AAC 110.130(d) is satisfied by the Petition, particularly with respect to the 4.58 square mile area approved for annexation by the Commission.

F. Size and Stability of Population.

The population size and stability standard is in 3 AAC 110.120.³⁰ DCED's analysis and conclusions regarding this standard are set out on pages 219 – 226 of its Preliminary Report.

3,946 individuals lived in the City of Homer at the time of the 2000 census. As noted with respect to the immediately preceding standard, the City of Homer currently ranks as the eleventh most populous city government in Alaska.

DCED estimated that 2,204 residents inhabited the 25.64 square miles petitioned for annexation at the time of the last census. That population is equivalent to the twentieth most populated city in Alaska.

The 4.58 square miles approved for annexation by the Local Boundary Commission are estimated to be inhabited by 898 people based on 2000 census data. That area alone is populated by a number of residents sufficient to render it the twenty-seventh most populous city government in Alaska if it were incorporated. Thus, the territory approved for annexation encompasses a substantial population in its own right.

As noted above, annexation of the 4.58 square miles approved by the Commission would boost the ranking of the City of Homer to the seventh most populous city government in Alaska.

The Commission notes that the population of the expanded boundaries of the City of Homer as now approved is larger than the population of all first class city governments in Alaska, except the City of Wasilla.

The percentage of residents in households and the percentage of owner-occupied housing suggest that the population both in the City of Homer and the 25.64 square miles petitioned for annexation (including the 4.58 square miles approved for annexation by the Commission) is well established.

³⁰ 3 AAC 110.120 provides as follows:

The population within the proposed boundaries of the city must be sufficiently large and stable to support the extension of city government. In this regard, the commission will, in its discretion, consider relevant factors, including:

- (1) total census enumeration;
- (2) duration of residency;
- (3) historical population patterns;
- (4) seasonal population changes; and
- (5) age distributions.

The record shows that the area in and around Homer experienced very substantial growth in population during the 1970s and 1980s. Although it still grew during the 1990s, the rate of population increase in and around Homer moderated considerably compared to the two previous decades.

Many communities in Alaska, particularly those in which tourism and commercial fishing are major segments of the economy, experience substantial seasonal population fluctuations. There is no indication in this proceeding that the Homer City government is unable to manage the circumstances surrounding the seasonal population changes in the greater community.

Although there are slight deviations in the age distribution patterns of the areas in and around Homer, the record does not demonstrate the presence of an unstable population.

The Commission concludes that the population within the expanded boundaries of the City of Homer as approved by the Commission is sufficiently large and stable to support the extension of city government. As such, the City of Homer's annexation proposal satisfies the standard set out in 3 AAC 110.120.

G. Human and Financial Resources.

The standard is found in 3 AAC 110.110.³¹ DCED's analysis and conclusions regarding this standard are set out on pages 227 – 244 and 357 – 359 (footnote 85) of its Preliminary Report, and page 33 of its Final Report.

Based on the entire 25.64 square mile proposal, the Petition projects that the City of Homer's operating expenditures would increase by \$414,463 annually. The Petition proposes to fund anticipated capital expenses through the sale of general obligation bonds subject to approval by the voters. The Petition indicates that debt service on a \$1.2 million ten-year general obligation bond would be \$166,966 annually. The City's cost projections are considered by the Commission to be reasonable.

The City estimates that annexation of the 25.64 square miles would increase its property tax revenues by \$696,163 annually. The City based its property tax revenue estimates on the certified real property assessed values provided by the Kenai Peninsula Borough. The City also estimates that annexation will increase its sales tax revenues by \$493,600 each year. The estimate of sales tax revenues was derived from data provided by the Kenai Peninsula Borough; the City reduced the figure provided by the Borough in order to base its proposal on a conservative figure.

No sources of additional revenue other than property taxes and sales taxes were included in the City's revenue estimates. The City's total projected annual increase in revenue amounts to \$1,189,763, but the record suggests that \$1,539,950 would be a more realistic estimate of the anticipated increase in City revenues.

³¹ 3 AAC 110.110. Resources provides as follows:

- The economy within the proposed boundaries of the city must include the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including the:
- (1) reasonably anticipated functions of the city in the territory being annexed;
 - (2) reasonably anticipated new expenses of the city;
 - (3) actual income and the reasonably anticipated ability to collect local revenue and income from the territory;
 - (4) feasibility and plausibility of the anticipated operating budget of the city through the third full fiscal year of operation after annexation;
 - (5) economic base of the territory after annexation;
 - (6) property valuations in the territory proposed for annexation;
 - (7) land use in the territory proposed for annexation;
 - (8) existing and reasonably anticipated industrial, commercial, and resource development;
 - (9) personal income of residents in the territory and in the city; and
 - (10) need for and availability of employable skilled and unskilled people.

Based on estimates provided in DCED's Final Report, supplemented by information about the nine parcels added to that area by the Commission, it is reasonably estimated that annexation of 4.58 square miles would generate slightly more than \$950,000 in additional annual revenues for the City of Homer.³² It is projected that annexation of 4.58 square miles will require the City to incur additional expenditures of approximately \$354,000 to serve the territory. Projected additional revenues exceed projected additional expenditures by about \$600,000 annually.

While respondents disputed estimates of revenues and expenditures by the City of Homer and DCED, even the testimony of Abigail Fuller as an expert witness on behalf of Citizens Concerned About Annexation during the December 14 – 15 hearing indicated that anticipated new revenues from annexation would exceed anticipated new expenses.

The anticipated ability of the City to collect the revenue in question is substantial since all of the projected revenues stem from long-established sources. Given its long-established nature, size and scope of its operations, competency of its staff, and good financial reputation, the City's projections of revenues and expenditures for the existing City of Homer appear to be credible.

The existing and projected revenue and expenditure data represent a feasible and plausible anticipated operating budget for the proposed expanded City of Homer. The budget should remain feasible and plausible through the third full fiscal year of operation after annexation absent notable changes in the: (1) population of the City of Homer (apart from that due to annexation), (2) powers and duties of the Homer city government, (3) rate of inflation, (4) local economic conditions, and (5) levels of State financial aid to local governments. While the population of the Homer area is growing, significant changes to the other four factors are not anticipated. It can be reasonably expected that any increased costs associated with future population growth will likely be offset with increased property tax and sales tax revenues.

The 25.64 square miles petitioned for annexation encompass a substantial economic base. There were forty commercial properties within the territory petitioned for annexation generating taxable sales of \$17.6 million in 1999.³³ The territory petitioned for annexation comprises about 15.2% of the economy (based on taxable sales) of the proposed expanded City of Homer. The vast majority of those commercial facilities lie within the 4.58 square miles approved for annexation by the Commission.

The economic base of the area within the City of Homer's current boundaries, as reflected by reported taxable sales, has exhibited steady growth over a period exceeding the past decade.

Contemporary personal income figures at the community level are not yet available. 1990 figures indicated that median household income in the City of Homer was \$36,652. Figures for the surrounding area were even higher. For example, the figures for Anchor Point and Fritz Creek were, respectively, \$42,847 and \$45,143. The comparable figure for the State of Alaska as a whole was \$41,408.

Based on the foregoing, the Commission concludes that the economy within the expanded boundaries of the City as approved by the Commission includes the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. Thus, the standard set out in 3 AAC 110.110 is satisfied by annexation of the 4.58 square miles approved for annexation by the Commission.

³² The nine parcels added by the Commission to the 3.9 square miles recommended for annexation by DCED in the Final Report have an assessed value of \$295,300. The nine parcels are undeveloped and uninhabited. There are no locally maintained roads within the nine parcels. Thus, the only impact that the inclusion of the nine parcels will have on City of Homer revenues and expenditures is limited to an increase in property tax revenues. At the current rate of 5.5 mills, the increase would amount to \$1,624.15 annually.

³³ The figure excludes sales from Kenai Supply, which has since closed.

H. Transition Plan for Extension of City Services

A transition plan is required by 3 AAC 110.900.³⁴ DCED's analysis and conclusions regarding the transition standard are set out on pages 244 – 253 of its Preliminary Report.

The Commission emphasizes that the standards relating to transition plans are written in a broad fashion to pertain to all existing and prospective city and borough governments that come before the Commission. These range from relatively basic institutions of local government such as the City of Kupreanof, a second class city in the unorganized borough with a population of twenty-three, to large and complex local governments such as the Municipality of Anchorage, a unified home rule borough with a population of 260,283.

The intent of 3 AAC 110.900(a) is to require each petitioner to demonstrate that it has given forethought to the manner in which it will extend services to the territory proposed for annexation. It must also demonstrate the petitioner's good faith to extend services.

The City of Homer is clearly one of the more substantial and sophisticated city governments in Alaska. Its resources and staff capabilities are superior to the majority of its 145 counterparts in the state.

While the nine-page transition plan presented by the City of Homer in its Petition lacks minutiae regarding the manner in which services are proposed to be extended, the law does not require a petitioner to provide a detailed comprehensive plan for the extension of services. Again, each petitioner need only provide evidence that it has given forethought to what it must do to deliver municipal services to the area proposed for annexation.

The City of Homer has clearly demonstrated that it has given consideration to the services to be extended to the territory proposed for annexation. Moreover, it has expressed its good faith intention to extend all services provided by the City of Homer, with the exception of water and sewer utilities, within the shortest practicable time following annexation. Given the substantial capital investment involved in water and

³⁴ 3 AAC 110.900 TRANSITION provides as follows:

- (a) A petition for incorporation, annexation, merger or consolidation must include a practical plan in which the municipal government demonstrates its intent and capability to extend essential city or essential borough services into the territory proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for detachment or dissolution must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after detachment.
- (b) A petition for a proposed action by the commission must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, service area, or other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city or service area, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.
- (c) A petition for a proposed action by the commission must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, service area or other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, or service area affected by the change, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occurs without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.
- (d) Before approving a proposed change, the commission will, in its discretion, require that all affected boroughs, cities, service areas, or other entities execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.

sewer utility extensions, the City of Homer plans to undertake such extensions over a long-term period, as demand and funding allow.

Based on the information provided by the City of Homer in its Petition and Reply Brief, analysis by DCED on pages 244 – 253 of its Preliminary Report, and statements by representatives of the City of Homer during the December 14-15, 2001 public hearing, the Commission concludes that the City of Homer has satisfied the intent of 3 AAC 110.900(a).

3 AAC 110.900(b) requires each petitioner to present a practical plan for the assumption of relevant powers, duties, rights, and functions presently being exercised by other service providers. In this case, the relevant responsibilities are principally limited to road maintenance, fire protection, and emergency medical service which are currently provided by the Kenai Peninsula Borough on a service area basis within the territory petitioned for annexation.³⁵ The Petition, Reply Brief, Preliminary Report, and statements during the December 14 – 15 public hearing clearly demonstrate that the requirements of 3 AAC 110.900(b) are plainly met. During the public hearing both Colette Thompson, Kenai Peninsula Borough Attorney, and Gordon Tans, City of Homer Attorney, expressed confidence that the two governments will amicably reach agreement as to the specific terms surrounding the transfer of road maintenance, fire protection, and emergency medical responsibilities from the Kenai Peninsula Borough to the City of Homer for the area in question.

3 AAC 110.900(c) requires each petitioner to provide a practical plan for the transfer and integration of relevant assets and liabilities. The Kenai Peninsula Borough Attorney testified that she contemplates no transfer of physical assets such as buildings or equipment as a result of annexation. Again, representatives from the Kenai Peninsula Borough and the City of Homer expressed confidence during the hearing that they will amicably agree to terms with respect to the transfer of assets and liabilities such as tax revenues and contracts for services. Given such, the Commission concludes that the requirements of 3 AAC 110.900(c) are satisfied.

The Commission notes here again that, as a matter of law, the area annexed to the City of Homer will be detached from the Kenai Peninsula Borough Road Service Area and the Kenai Peninsula Borough Kachemak Emergency Service Area. Details about such were addressed previously under the civil and political rights standard. In sum, it is the view of the Commission, DCED, and the State Attorney General's Office that the requirements of AS 29.35.450(c) are not applicable to city annexations, particularly legislative review annexations.³⁶

³⁵ The Kenai Peninsula Borough also provides port and harbors, tourism promotion, special assessment authority for utility line extensions, and economic development on a nonareawide basis. The City of Homer also provides those services within its corporate boundaries.

³⁶ Again, see the December 12, 2001 memorandum from Marjorie Vandor, Assistant Attorney General (File Number 663-02-0091), and the November 7, 2001 memorandum from DCED Commissioner Debby Sedwick, requesting the opinion.

I. Inclusion of Areas Necessary to Provide Services on an Efficient, Cost-Effective Level

The standard at issue is set out in 3 AAC 110.130(a).³⁷ DCED’s analysis and conclusions regarding this standard are set out on pages 253 – 268 of its Preliminary Report. Additional information relevant to this particular standard is provided on pages 5 – 19 and 32 – 34 of DCED’s Final Report.

On its surface, the standard is typically applied to determine only whether the proposed expanded boundaries of a city are expansive enough to encompass “all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level.” However, the standard can also be properly applied to determine whether parts of the territory proposed for annexation will hinder the efficient, cost-effective delivery of services if such are included within the expanded boundaries of the city.

During the public hearing, requests were received from owners of three parcels adjoining the eastern portion of the so-called urban area recommended for annexation by DCED. Specifically, John Fowler requested the annexation of a 25.6-acre parcel and a 70.0-acre parcel that he owns. Additionally, Joseph L. Lester and Des Lester requested the annexation of their 54.4-acre parcel. Those parcels are depicted on the accompanying map.



³⁷ 3 AAC 110.130(a) provides as follows:

- The proposed boundaries of the city must include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including
- (1) land use and ownership patterns;
 - (2) population density;
 - (3) existing and reasonably anticipated transportation patterns and facilities;
 - (4) natural geographical features and environmental factors; and
 - (5) extraterritorial powers of cities.

Moreover, the Commission considered six parcels south of the Sterling Highway corridor recommended for annexation by DCED to warrant inclusion in the City of Homer at this time. Three of those parcels are owned by the State of Alaska. One of the State-owned parcels is 80 acres, another is 88.46 acres, and the third parcel consists of 9.09 acres. The other three parcels are privately owned. One is a 42.98-acre parcel owned by Cook Inlet Region, Incorporated, another is a 19.99-acre parcel owned by Charlene Wilkins, and the remaining property is a 5.58-acre parcel owned by James Murphy. None of the six parcels is developed. The six parcels in question are depicted on the accompanying map.



The 4.58 square mile area approved for annexation by the Commission consists of the 3.9 square miles recommended for annexation by DCED, the Fowler and Lester properties, and the six parcels south of the Sterling Highway corridor.

As noted in its analysis of this standard on pages 253 – 268 of the Preliminary Report, pages 5 – 19 of the Final Report, and pages 32 – 34 of the Final Report, the 3.9 square miles recommended for annexation by DCED has substantial residential, commercial and other development. Although the Fowler and Lester parcels are currently undeveloped, there are indications that those three parcels are likely to be subdivided and improved in the foreseeable future. The current assessed value of those three parcels is \$232,500. The six parcels south of the Sterling Highway corridor are also undeveloped but are vital to protection of the “viewshed” of the community. Annexation of those six parcels is warranted for reasons outlined in the October 30, 2001 written comments by the City regarding DCED’s Preliminary Report and on the basis of testimony provided during the Commission’s December 14 – 15 hearing. Only two of the six parcels are taxable. The current assessed value of those properties is \$62,800.

The population density of the 3.9 square miles recommended for annexation by DCED is approximately 230 persons per square mile. With the addition of the nine parcels added by the Commission, the 4.58 square mile area approved for annexation has a population density of 196 people per square mile. In comparison, the average population density of all cities in Alaska is approximately 174 persons per square mile.

There are seven principal roadways that link the territory petitioned for annexation to the area within the City of Homer. Six of the seven roads are within the 4.58 square miles approved for annexation by the Commission. Additionally, air and marine transportation facilities serving the territory proposed for annexation are within the City of Homer.

In addition to transportation ties, the two areas share strong social, cultural, and economic interests. Testimony and comments were offered by a number of individuals during the hearing that the territory petitioned for annexation and the City of Homer are part of the same community.

The Kenai Peninsula Borough has granted extraterritorial powers to the City of Homer for land use regulation in the Bridge Creek Watershed. The City of Homer is currently developing an ordinance under which the City would exercise that power. The grant of extraterritorial powers to regulate the watershed provides the City of Homer with full legal authority to enact technically sound and socially responsible regulations governing the use and development of the watershed. As such, the Bridge Creek Watershed per se is not essential to the efficient, cost-effective delivery of services by the City of Homer at this time.

Residents and property owners within the 25.64 square miles petitioned for annexation receive, or may be reasonably expected to receive, directly or indirectly, the benefit of services and facilities provided by the City of Homer, whether rendered or received inside or outside the territory proposed for annexation. Such includes water utility service and bulk water sales, sewer utility service, fire protection service, and emergency medical service to limited parts of the 25.64 square miles petitioned for annexation. Emergency police services are provided to a broader area. Moreover, citizens living throughout the territory petitioned for annexation use facilities owned and operated by the City of Homer, such as the library, port, harbor, and airport.

The per capita assessed value of the 25.64 square miles petitioned for annexation is estimated to be \$60,238. In comparison, the per capita assessed value of the 4.58 square miles is approximately \$64,994.

Based on the foregoing, the Commission concludes that the standard set out in 3 AAC 110.130(a) is best met *at this particular* time if the expansion of the boundaries of the City of Homer is limited to the 4.58 square miles approved for annexation by the Commission.

However, the Commission notes that as the outlying territory continues to grow and develop, so too may the ability of the City of Homer to serve that territory efficiently and effectively. There are many individuals and organizations with overlapping interests regarding the future delivery of essential local government services in the area in question. They include the Homer and Kachemak city governments, the Kenai Peninsula Borough, and citizens of those three governments. All would be well served by recognition of their mutual interests in that regard so that better planning for future alterations of the structure of local government in the greater Homer area may occur in a productive manner.

J. City Boundaries Limited to Community plus Ten Years' Growth.

The standard at issue is set out in 3 AAC 110.130(c).³⁸ DCED's analysis and conclusions regarding this standard are addressed on pages 269 – 280 of its Preliminary Report. Additional information about boundaries that is relevant to this particular standard is provided on pages 5 – 19 and 32 – 34 of DCED's Final Report.

The determination by the Commission whether the 4.58 square miles approved for annexation and the area within the existing corporate boundaries of the City of Homer comprise a local community must be made in light of a number of factors set out in 3 AAC 110.920.³⁹

³⁸ 3 AAC 110.130(c) provides as follows:

The proposed boundaries of the city must include only that area comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation of that city.

³⁹ 3 AAC 110.920 DETERMINATION OF COMMUNITY provides as follows:

(a) In determining whether a population comprises a community or social unit, the commission will, in its discretion, consider relevant factors, including whether the people
(1) reside permanently in a close geographical proximity that allows frequent personal contacts and has a population density that is characteristic of neighborhood living;

The first factor is whether residents of the area within the existing corporate boundaries of the City of Homer as well as the 4.58 square miles approved for annexation generally have exhibited a long-term presence. The testimony of those who spoke to the Commission during the December 14 – 15 hearing, coupled with DCED’s analysis and conclusions on the matter, generally indicate that this is clearly the case.

Second, the current residents of the City of Homer and the residents in the 4.58 square miles in question live in close geographic proximity to one another. In many cases, residents of the two areas live within blocks of one another. Given the close proximity of the two areas, it would be difficult for residents of one area to avoid frequent personal contacts with residents of the other, even if that were their wish.

Testimony by representatives of neighborhood homeowners’ associations and others indicate that the patterns of development in the 4.58 square miles approved for annexation have evolved from that of remote and isolated homesteads to that of neighborhood living. The areas have become more integrated, such that they are now part of the same community.

Respondents Sallie Dodd Butters and Peter Roberts testified that residents the territory petitioned for annexation chose to live outside the City of Homer to avoid its jurisdiction or because they wanted nothing to do with the city government. However, respondents Michael Kennedy and Margaret Seelye testified that residents of the City of Homer and the entire 25.64 square miles petitioned for annexation are part of the same community. The Commission considers the testimony given by respondents Kennedy and Seelye to be better supported, more persuasive, and more pertinent on this point.

The Commission notes that residents of the 4.58 square miles in question visit the area within the corporate boundaries of the City of Homer on a regular basis for economic, social, and other occasions. As DCED indicated in its Preliminary Report, people in the 25.64 square miles petitioned for annexation and residents of the existing City of Homer generally utilize the same governmental offices and facilities, patronize the same library, shop at the same commercial facilities, attend the same clubs, associations, and churches, read the same newspapers, listen to the same radio stations, and utilize the same medical service facilities. Moreover, many of the area’s major roads, such as the Sterling Highway, Diamond Ridge Road, Skyline Drive, West Hill Road, East Hill Road, East End Road, and Kachemak Drive bind portions of the territory petitioned for annexation with adjacent areas within the current City boundaries. All of those roads, with the exception of Diamond Ridge Road, pass through the 4.58 square miles approved for annexation by the Commission.

School enrollment is another factor that supports the conclusion that both areas are part of the same community. The Homer High School and Homer Middle School attendance area boundaries encompass all of the territory proposed for annexation and the City of Homer. Plainly, students who live in the City of Homer and the territory proposed for annexation generally attend the same schools.

Residents of the community are employed in a broad range of public and private sector jobs including fishing, fish processing, trade and service, and a considerable seasonal

(Continued from previous page)

(2) residing permanently at a location are a discrete and identifiable unit, as indicated by such factors as school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial establishments and other service centers.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that a population does not constitute a community or social unit if

(1) public access to, or the right to reside at, the location of the population is restricted;

(2) the population is contiguous or closely adjacent to a community or social unit and is dependent upon that community or social unit for its existence; or

(3) the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence.

tourist industry. Evidence in the record indicates that a number of those who live in the Diamond Ridge, Millers Landing, Fritz Creek, and Anchor Point areas are employed within the corporate boundaries of the City of Homer.

The Commission's site visit by helicopter and automobile, coupled with the testimony and comments presented at the Commission's public hearing along with other evidence in the record, demonstrate that the places of residency in the territory petitioned for annexation are generally permanent and quite substantial.

The territory proposed for annexation is largely a residential extension of the area within the City of Homer. Moreover, Millers Landing and the Sterling Highway corridor within the territory approved for annexation encompass significant commercial development.

Several of those who testified at the public hearing indicated that they volunteer in a number of areas (e.g., fire protection, emergency medical services, animal control, museum, and library) for the betterment of the entire community. By their actions, they recognize that there is but one community encompassing both the area within the existing City of Homer and the territory petitioned for annexation.

The Commission notes that public access to the area petitioned for annexation is unrestricted. There is no evidence that the area is tied to another community or social unit. Additionally, there is no evidence that the 4.58 square miles approved for annexation by the Commission are generally inhabited by individuals who work in that area and are present as a condition of their employment.

The requirement that the 25.64 square miles sought for annexation by the Petition encompass reasonable predictable growth and development for the next ten years is demonstrably met. Reviews of aerial photographs, tours by the Commission, testimony of area residents as to development patterns, and physical proximity of the area suggests that a logical pattern of urban or suburban development is extending northward from the area within the City's present boundaries.

Homer serves as a trading and service center for nearly eleven thousand residents, including residents inhabiting the territory petitioned for annexation. The character of commercial establishments and other service providers in the territory proposed for annexation suggests that they are part of the greater community of Homer.

The area proposed for annexation is part of a reasonably compact city and immediately adjacent suburbs that together comprise the core of the greater Homer area. Corporate boundaries notwithstanding, the area proposed for annexation is, without question, part of the social and economic fabric of the greater Homer community.

Although the territory petitioned for annexation and the area within the City of Homer are divided by a now-obsolete political boundary, the record indicates that the de facto Homer community encompasses the entire territory petitioned for annexation. Since a larger area satisfies the standard, a more conservative approach would readily encompass the 4.58 square miles approved for annexation. If anything, the annexation initiative is tardy rather than premature. Given the facts in this matter, the 4.58 square miles approved for annexation clearly satisfies the standard set out in 3 AAC 110.130(c).

K. Comparative Ability to Provide Essential Municipal Services

3 AAC 110.090(b) provides that the Commission may approve annexation to the City of Homer only if the City is best able to provide essential city services to the territory proposed for annexation.⁴⁰ The phrase “essential city services” as used in 3 AAC 110.090(b) is defined in 3 AAC 110.990(8).⁴¹ DCED’s analysis and conclusions regarding this standard are set out on pages 280 – 313 of its Preliminary Report.

3 AAC 110.090(b) does not list specific factors for the Commission to consider in determining whether an annexing city is best able to provide services. However, it is relevant in this case to consider (1) proximity of other municipalities, (2) geographic features, (3) legal capacity of municipalities, (4) fiscal capacity, (5) existing capital facilities, and (6) staff capabilities.

Four municipal governments have jurisdiction wholly or partially within a twenty-five mile radius of the territory proposed for annexation. These are the Kenai Peninsula Borough, City of Homer, City of Kachemak, and City of Seldovia.

The considerable distance and lack of a road connection between the City of Seldovia and the territory petitioned for annexation render it impractical for the City of Seldovia to serve the territory petitioned for annexation.

If the Kenai Peninsula Borough were to extend services such as water utility service, sewer utility service, and police protection to the territory proposed for annexation, it would seem abundantly more reasonable and practical for it to do so on a service area basis rather than on an areawide or nonareawide basis. To do otherwise would require substantially greater resources. Approval by the voters in a far more expansive area that the territory petitioned for annexation would be required. Under those circumstances, voters in areas beyond the territory petitioned for annexation are less likely to accept a proposal to extend services that are arguably needed in the territory proposed for annexation, but perhaps may not be in all other parts of the Borough’s areawide or nonareawide jurisdictions. It is unlikely to be reasonable or practical for the Borough to provide such services on an areawide or nonareawide basis.

Article X, § 5 of Alaska’s Constitution and AS 29.35.450(b) place particular limitations on the creation of new service areas. Both express a preference for city annexation over the creation of a new service area. However, exceptions to the constitutional and statutory preference for a city government versus a borough service area generally exist in cases involving merger, consolidation, or unification of city and borough governments.

As a first class city, the City of Homer possesses slightly greater existing legal capacity than the City of Kachemak (a second class city) because the latter lacks the unilateral power of eminent domain under AS 29.35.030 and unilateral power to levy property taxes under AS 29.45.590.

Based on the foregoing, the City of Homer possesses the greatest legal capacity to extend services to the territory proposed for annexation. Because of the significant restrictions on its ability to create new service areas, the Kenai Peninsula Borough ranks last among

⁴⁰ 3 AAC 110.090(b) provides that :

A territory may not be annexed to a city if essential city services can be provided more efficiently and more effectively by another existing city or by an organized borough.

⁴¹ 3 AAC 110.990(8) states:

“essential city services” means those legal activities and facilities that are determined by the commission to be reasonably necessary to the community and that cannot be provided more efficiently and more effectively either through some other agency or political subdivision of the state, or by the creation or modification of some other political subdivision of the state...

the three municipalities in terms of its legal capacity to extend city-type services to the territory proposed for annexation.

The Kenai Peninsula Borough has the highest per capita value of taxable property among the three municipalities. However, that is based on areawide jurisdiction. Because it would generally be unreasonable or impractical to extend new borough services on an areawide or nonareawide basis to serve needs of the territory proposed for annexation for reasons already noted, it is more relevant to compare the assessed values of the City of Kachemak, City of Homer, and the Kachemak Emergency Service Area.

The City of Kachemak has the highest per capita assessed value of the three. The City of Homer is a close second in the ranking (3.3% less than the City of Kachemak). The Kachemak Emergency Service Area is a more distant third (11.1% less than the City of Kachemak).

By a wide margin, the City of Homer has the highest capacity of any of the areas examined to generate revenues from taxable sales. In per capita terms, the ability of the City of Homer to generate sales tax revenue is nearly twice that of the Kenai Peninsula Borough and nearly three times greater than that of the territory proposed for annexation. No figures are available for the City of Kachemak, but it is reasonably assumed, based on the record, that the sales tax generating capacity of the City of Kachemak would place it last in the rankings.

The 1999 per capita locally generated revenues of the City of Kachemak amounted to \$253. Only thirteen of Alaska's 145 cities in existence at that time had smaller per capita locally generated revenues. The statewide average per capita locally generated revenues for all 145 cities in Alaska during 1999 was \$2,365, more than nine times the level of the City of Kachemak. The City of Homer's per capita locally generated revenues in 1999 totaled \$2,508.

It is evident that the City of Homer has the superior fiscal capacity to provide services to the territory proposed for annexation. The City of Kachemak, by virtue of its relatively higher property values (compared to the Kachemak Emergency Service Area) ranks second. The Kenai Peninsula Borough's fiscal capacity to provide services on a service area basis follows closely behind the City of Kachemak.

The City of Homer has superior capacity to serve the territory proposed for annexation. In particular, the City has substantial capital investments with respect to facilities to provide water utility service, sewer utility service, fire protection, police protection, emergency medical services, jail, library, port, parks and recreation, road maintenance, and harbors. Altogether, the City has nearly \$80 million in fixed assets to provide public services.

Similarly, the City of Homer has superior existing staff resources needed to serve the territory proposed for annexation. The current budget of the City of Homer allocates funding for 90.3 full-time equivalent positions.

The fact that the City of Homer is currently providing a broad range of services and facilities that directly or indirectly benefit the territory petitioned for annexation is prima facie evidence of its greater capability to provide those services to the territory proposed for annexation.

The legal ability of the Kenai Peninsula Borough to provide services to the territory proposed for annexation is circumscribed by the provisions of Article X, § 5 of the Constitution of the State of Alaska and AS 29.35.450(b). Accordingly, no overriding significance is ascribed to the establishment of the Kachemak Emergency Service Area with respect to the capability of the Kenai Peninsula Borough to serve the territory proposed for annexation.

The City of Homer enjoys superior fiscal capacity, capital facilities, and staff resources to serve the territory petitioned for annexation as compared to other existing municipal governments. In sum, the record demonstrates that no other existing city government or organized borough can provide essential city-type services to the area petitioned for

annexation more efficiently or more effectively than the City of Homer. Thus, the City of Homer's annexation proposal satisfies the comparative ability standard set out in 3 AAC 110.090(b), both for the area petitioned for annexation and the area approved for annexation.

L. Need for City Government

3 AAC 110.090(a) specifies that an area may be annexed to a city provided, in part, that the LBC determines there is a reasonable need for city government in the area.⁴² DCED's analysis and conclusions regarding this standard are set out on pages 314 – 331 of its Preliminary Report.

The Commission finds that it is clearly evident that extensive municipal services are already provided throughout the territory proposed for annexation, either by the Kenai Peninsula Borough or the City of Homer.

When the Petition for annexation was filed, formal arrangements for fire protection and emergency medical services were lacking in the territory proposed for annexation. The subsequent creation of the Kachemak Emergency Service Area provided such formal arrangements in the area petitioned for annexation, except Millers Landing. In other proceedings, the Local Boundary Commission has largely ignored increases in borough services within an area proposed for city annexation if the changes were made only recently and if they appeared to have been motivated, in part, by an effort to weaken the merits of an annexation proposal.

The lack of formal arrangements to provide fire protection and emergency medical services to Millers Landing clearly represents an economic problem for the City of Homer. The City of Homer is providing services to the area in question without compensation and the City lacks express extraterritorial authority to provide fire protection which may expose the City of Homer to certain liabilities.

The lack of formal arrangements for fire protection and emergency medical services is also an economic problem for the residents and property owners in Millers Landing. The City of Homer might abandon such services if the area is not annexed which would expose Millers Landing property owners and residents to risk of significant property loss. While Millers Landing could be added to the Kachemak Emergency Service Area, such action would raise issues relating to previously noted constitutional and statutory limits regarding service areas.

⁴² 3 AAC 110.090 NEEDS OF THE TERRITORY provides as follows:

- (a) The territory must exhibit a reasonable need for a city government. In this regard, the commission will, in its discretion, consider relevant factors, including:
- (1) existing or reasonably anticipated social or economic problems;
 - (2) existing or reasonably anticipated health, safety, and general welfare problems;
 - (3) existing or reasonably anticipated economic development;
 - (4) adequacy of existing services; and
 - (5) extraterritorial powers of adjacent municipalities.

The City of Homer makes bulk water sales to commercial water carriers. The City estimates that the bulk water carriers serve about 370 households outside the City, most of which are in the territory proposed for annexation. While those projections have been disputed, it is apparent that the lack of adequate sources of water has potential for severely limiting growth and development in the territory petitioned for annexation. As such, a shortage of potable water is an economic problem. Concerns on the part of officials of the City of Homer regarding the capacity of the City's existing water utility system led to the recent establishment of formal procedures for the cancellation of water sales for the area outside the City of Homer's "certificated service area" in times of need.

In addition to creating an economic problem, the lack of a public water utility can constitute a significant threat to public health, particularly in heavily developed areas. The Alaska Department of Environmental Conservation (hereinafter "DEC") was asked to review relevant aspects of the Homer annexation proposal. DEC noted that soil conditions in the Homer area sometimes preclude the use of conventional septic systems. In such cases, septic systems may have to be designed or engineered for specific site conditions that deal with "tight soils or slopes."

DEC noted further that the functional life of septic systems is affected by site conditions. DEC expressed the view that the territory petitioned for annexation can accommodate more individual septic systems if they are designed and installed properly. In prior proceedings, however, DEC has expressed the general view that growth and development can be constrained by the lack of water and sewer utilities. Additionally, DEC has previously expressed the general view that significant public health risks may arise in areas of concentrated development that lack water and sewer utilities.

The potential for conflicts over land use increases in proportion to the level of development. Since the level of development is substantially greater in the 4.58 square miles approved for annexation by Commission, the need for land use regulation can be reasonably expected to be greatest in that area. Land use conflicts might reasonably be considered to be both a social problem and an economic problem.

Population and development within the 4.58 square miles approved for annexation were addressed previously. Given its substantial population and level of development, the 4.58 square miles approved for annexation generate a significant demand for fire protection and emergency medical service response capability.

The number of emergency services calls outside the City of Homer has generally been rising. Last year had the highest reported number of emergency medical service responses by the City of Homer outside its boundaries. While some contend that the statistics cited in the record are erroneous or do not pertain definitively to the territory petitioned or approved for annexation, the population density and level of development reasonably suggest otherwise. Further, it is possible, even probable, that a number of the calls inside the City of Homer were made on behalf of residents of the territory approved for annexation who were working, shopping, or conducting other affairs within the City of Homer.

After a steady decline in the number of property crimes and violent crimes in Homer during the 1990s, the incidence of such crimes increased significantly in 2000. The State Troopers cannot provide twenty-four hour per day service in the southern Kenai Peninsula. Such would require a minimum of six Troopers. The Homer Trooper post is staffed with one sergeant and two troopers. A single trooper attached to the Ninilchik post is also available to serve Homer. The ratio of residents per trooper in the area served by the Homer-Ninilchik posts is on the order of 3,175 residents per trooper (3.1 troopers per ten thousand residents) – more than three times the ratio in E Detachment as a whole.

The current fiscal year budget of the City of Homer authorizes 9.6 full-time equivalent positions in its police department (excluding dispatchers and jail staff). The 1996 average number of full-time sworn local officers and primary State officers in Alaska (seventeen) and the entire nation (also seventeen) was 38.2% greater than the level available in the southern Kenai Peninsula area (12.3).

Bureau of Justice statistics also indicated that during 1996, sixty-one local police departments in Alaska employed 740 full-time sworn police officers. On average, those departments employed twelve full-time sworn officers for every ten thousand residents. In comparison, the national average was fifteen full-time local sworn officers for each ten thousand residents.

The City of Homer has authorized 9.6 full-time equivalent police officers to serve 3,946 residents (or 24.3 officers for every ten thousand residents). The City proposed to employ two additional officers following annexation of the 25.64 square miles petitioned for annexation. The City of Homer would then employ 11.6 officers to serve 6,150 residents (or 18.9 officers per ten thousand residents). Although higher than the state and national averages, the existing and proposed ratios of City of Homer police to residents appear reasonable given fundamental characteristics of the Homer economy. The City may choose to employ fewer than two additional officers as a result of the boundary amendment made by the Commission.

Bureau of Justice statistics indicated that in 1996, five primary sworn State police officers were employed for every ten thousand residents in Alaska. As noted above, the ratio in the southern Kenai Peninsula area is 3.2 troopers per ten thousand residents. The 1996 ratio of State troopers in Alaska is estimated to be 56.3% greater than the current ratio in the southern Kenai Peninsula.

Lieutenant Bowman of the Troopers said that annexation could reasonably be expected to facilitate faster police service to the annexed area, make more marked units visible with greater frequency in the annexed area, and thus be beneficial to delivery of law enforcement in the Homer area.

With its greater commercial development and more concentrated residential development, the greatest need for expanded police service exists in the 4.58 square miles approved for annexation by the Commission.

It is reasonably assumed that residents of the territory petitioned for annexation generally make use of City facilities and services such as the library, parks and recreation, and ports and harbors.

No extraterritorial powers of adjacent municipalities constitute an impediment to annexation by the City of Homer.

In sum, there is a clear need for city services in the 4.58 square mile area approved for annexation by the Commission. That area includes the 3.9 square miles recommended for annexation by DCED and the additional nine parcels added by the Commission. The need for city services in the remnant territory is markedly less. Thus, the standard set out in 3 AAC 110.090(a) is satisfied with respect to the 4.58 square mile area approved for annexation. The need for city government in the remnant territory, while not *de minimus*, generally exists to a noticeably lesser degree, particularly with respect to water and sewer utilities, land use regulation, and police service.

M. Balanced Best Interests

3 AAC 110.140 provides that the Commission may approve annexation to the City of Homer only if it is demonstrated that the boundary change is in the best interests of the state, the territory to be annexed, and all political subdivisions affected by the annexation.⁴³ DCED's analysis and conclusions regarding this standard are set out on pages 332 – 346 of its Preliminary Report.

No part of the territory proposed for annexation is an enclave. However, approval of the City of Homer's annexation proposal would effectively render the area within the corporate boundaries of the City of Kachemak an enclave within the boundaries of the City of Homer. The Commission views the prospect of altering the boundaries of the City of Homer in a manner that would create an enclave – particularly one encompassing another entire city government – to be inappropriate. Such a boundary configuration would contravene the fundamental constitutional policy against proliferation of local governmental units. It would also be counter to general and long-standing principles relating to the creation and alteration of municipal boundaries.⁴⁴

The degree to which ground water and surface water is contaminated or threatened by contamination as a consequence of conditions existing or developing in the area proposed for annexation is open to argument. However, DEC has advised the Commission in prior proceedings that, generally, significant public health risks may arise in areas of concentrated development that lack sewer and water utilities.

⁴³ 3 AAC 110.140 provides as follows:

Territory that meets all of the annexation standards specified in 3 AAC 110.090 - 3 AAC 110.130 may be annexed to a city by the legislative review process if the commission also determines that annexation will serve the balanced best interests of the state, the territory to be annexed, and all political subdivisions affected by the annexation. In this regard, the commission will, in its discretion, consider relevant factors, including whether the

- (1) territory is an enclave surrounded by the annexing city;
- (2) health, safety, or general welfare of city residents is or will be endangered by conditions existing or potentially developing in the territory, and annexation will enable the city to regulate or control the detrimental effects of those conditions;
- (3) extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the boundaries of the city;
- (4) residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of city government without commensurate tax contributions, whether these city benefits are rendered or received inside or outside the territory, and no practical or equitable alternative method is available to offset the cost of providing these benefits;
- (5) annexation of the territory will enable the city to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the city; and
- (6) territory is so sparsely inhabited, or so extensively inhabited by persons who are not landowners, that a local election would not adequately represent the interests of the majority of the landowners.

⁴⁴ Only two of Alaska's 162 municipal governments have enclaves. Those are the City of Palmer and the Haines Borough. The Commission and DCED have expressed public policy concerns about the existence of such enclaves in prior proceedings involving both of those governments. Moreover, the Commission has denied boundary proposals for other municipal governments that would have created enclaves.

Given the potential for serious contamination, it is evident that the City of Homer and portions of the area proposed for annexation, particularly the 4.58 square miles approved for annexation by the Commission, have a mutual interest in addressing water and sewer utility matters. The 4.58 square mile area generally has more concentrated development, smaller parcels, and greater population density compared to the remainder of the territory petitioned for annexation. Annexation of the 4.58 square miles in question would enable the City of Homer to regulate or control the detrimental effects of existing and potential conditions in those portions of the territory petitioned for annexation.

As noted previously, substantial commercial growth of the Homer community has occurred beyond the City of Homer's now-obsolete jurisdictional boundaries. This is particularly the case in Millers Landing and along the Sterling Highway corridor in the 4.58 square miles approved for annexation. Sales taxes are an especially significant element of the City of Homer's ability to fund essential services. The City of Homer's sales tax generates nearly three times more revenue than its property tax.

Unless its boundaries are expanded, the City of Homer will likely face the prospect of continued long-term erosion of its tax base as further commercial and residential development occurs adjacent to the City's present boundaries. The Petitioner's contention that the City of Homer delivers a range of services to residents in all or portions of the territory proposed for annexation is valid, particularly with respect to the 4.58 square miles approved for annexation by the Commission. Examples include fire protection and emergency medical service, jail, emergency dispatch services, back up to Alaska State Troopers, animal control, port and harbor services, economic development, parks, city roads, and public library.

Those who regularly patronize commercial establishments within the existing boundaries of the City of Homer contribute to the City of Homer's sales tax revenues. Moreover, citizens in the territory proposed for annexation contribute in other ways, such as donating their services to the City of Homer fire department, animal control, museum, and library. Notwithstanding, the City's argument about the lack of commensurate property tax contributions is legitimate. Tax inequality is evident in the status quo and annexation would be instrumental in relieving it.

Alternatives such as (1) new or higher user fees for City services, (2) transferring powers from the City of Homer to Kenai Peninsula Borough service areas, and (3) raising the City sales taxes are not viable alternatives.

The City of Homer currently imposes user fees in the traditional areas of water utilities, sewer utilities, boat harbor, and port. Imposing new user fees for services such as fire protection, emergency medical service, police service, or libraries is not considered practical or equitable. User fees in those areas are non-traditional among local governments in Alaska. User fees, by definition, are not taxes. They are voluntary and not comprehensive in scope. It is simply not realistic, for example, to suggest that the City of Homer would deny fire protection service or emergency medical service to any resident of Millers Landing in need of such services because they were not a "subscriber" to fire and emergency medical services. Neither is it realistic to suggest that the City would deny emergency backup to the Alaska State Troopers when called upon to assist in any portion of the territory proposed for annexation.

Moreover, the prospect of imposing user fees for certain fundamental services is widely criticized from a public policy standpoint because such would require those who earn less to utilize a greater percentage of their disposable income for the library, fire protection, police, and emergency medical services. Further, in many cases, user fees that cover both operating and capital costs would have to be greater than patrons would be willing to pay. Lastly, user fees would add to the City's operating costs. In contrast, the Kenai Peninsula Borough bears the cost of collecting sales taxes and property taxes levied by the City of Homer. The Borough remits the entire proceeds of taxes levied by the City of Homer to the City of Homer without any charge.

The alternative of transferring powers from the City of Homer to the Kenai Peninsula Borough for operation in service areas raises the same fundamental legal and policy issues that were addressed previously.

Moreover, the Kenai Peninsula Borough would be compelled to levy taxes in the service area to support new services. For example, the Borough recently imposed a 1.75 mill property tax to support the newly created Kachemak Emergency Service Area. As a result of that levy, the property tax differential between the City of Homer and the territory proposed for annexation has narrowed considerably.

It is conceivable that service areas could proliferate to the extent that overall property tax rates in those service areas would exceed the rates in the City of Homer. For example, in Kodiak, borough service areas have proliferated around the corporate limits of the City of Kodiak. Many residents of the area outside the City of Kodiak now pay higher property taxes for fewer services than their counterparts within the City of Kodiak. Additionally, rates charged for water and sewer utility services in the areas adjoining the City of Kodiak are 25% higher than they are within the City of Kodiak.

Increasing the City of Homer sales tax rate does not appear to be a practical and equitable alternative for the City over the long-term. Such could prove counterproductive since it might provide an incentive for businesses to locate immediately outside City boundaries to achieve a competitive advantage.

There have been several instances when the Commission has approved annexations, in large part, to address shifting tax bases. For example, the Commission approved the annexation of 6.5 square miles to the City of Haines that took effect in March 1999. The Commission approved that annexation, partly, to respond to concerns by the City of Haines that its property and sales tax bases were being eroded. The Commission noted as follows: (LBC decisional statement regarding annexation to the City of Haines, page 5) (Emphasis added)

... it is clear that the area proposed for annexation is part of the community of Haines. Giving the City full authority to exercise its jurisdiction in the area is in the City's best interest. Annexation will eliminate potential liabilities associated with the City of Haines providing police services in the territory proposed for annexation. It will also provide the City of Haines with suitable jurisdictional boundaries – without which the City is likely to face a significant decline in sales tax revenues as businesses continue to relocate to the area proposed for annexation. Additionally, annexation will allow the City to receive ad valorem taxes from property owners who receive direct and indirect benefit from City services and facilities. Further, annexation will give the City of Haines greater ability to address health and public safety needs of the community.

Annexation is the most appropriate means to ensure that the City of Homer acquires both the jurisdiction and enhanced financial ability necessary to deliver services that benefit the residents of both the City and the outlying areas. Empowering the City of Homer by expanding its jurisdiction is in the interests of the residents and property owners of the City as well as those in the territory proposed for annexation, particularly Millers Landing and the urban area. Absent annexation, the City faces the prospect of having to scale back essential services that have previously been made available to those living outside City boundaries. Such could degrade the quantity and quality of essential services available to a substantial number of residents of the territory proposed for annexation and place greater burdens on the Kenai Peninsula Borough and the State of Alaska.

As noted in earlier, the record clearly demonstrates that the territory petitioned for annexation, particularly the 4.58 square miles approved for annexation, has undergone substantial commercial and residential growth and that the area is reasonably anticipated to continue to grow and develop in the foreseeable future. Unless annexation of the 4.58 square miles approved by the Commission occurs, both the City and the area approved for annexation could be negatively affected because, absent planning, development detrimental to both areas will occur.

The record demonstrates that the area petitioned for annexation is populated to the degree that if it were a separate city, it would rank as the twentieth most-populous city in Alaska. However, development patterns in the 4.58 square miles approved for annexation

generally demonstrate much higher population densities and more commercial activities than the remnant area.

The record does not conclusively demonstrate that the territory proposed for annexation is extensively inhabited by persons who are not landowners.

Extending the City of Homer's jurisdiction to the 4.58 square miles approved for annexation would benefit the Kenai Peninsula Borough and the State of Alaska by relieving each of responsibility for the delivery of services assumed by the City. For the Borough, annexation would shift planning related functions, fire protection, emergency medical services, and responsibility for road maintenance within any territory added to the City of Homer. Annexation would also relieve the Alaska State Troopers of primary responsibility for serving those areas. The jurisdiction of Alaska State Troopers is, of course, statewide. Nevertheless, annexation of the 4.58 square miles approved for annexation would shift additional responsibility for local law enforcement duties in those areas to the City of Homer and to a limited extent relieve some of the burden of service delivery currently borne by the Alaska State Troopers.

As a fundamental public policy, empowerment of qualified local governments to assume greater responsibilities is appropriate when such local governments exhibit the willingness and capability to do so.

Actions taken by the Homer City government can have considerable effect (or the potential for such) upon residents beyond the corporate boundaries of the City. For example, the City of Homer has the authority to "restrict, interrupt, decrease, or terminate the sale of water for export or consumption outside the certificated service area whenever the city council determines it is in the best interest of the city to do so." There are a number of other aspects of the daily lives of residents in the territory proposed for annexation that are affected by decisions rendered by elected and appointed officials of the City of Homer (e.g., port and harbor tariffs, public safety issues, maintenance of streets where people shop, go to work, attend schools and churches, et cetera). Enfranchisement of those so directly affected by the City of Homer would be ideal.

Moreover, it is reasonably assumed that residents of the territory proposed for annexation generally shop at businesses within the existing boundaries of the City of Homer. Those individuals pay a 3.5% sales tax to the City of Homer on all taxable purchases made within the corporate boundaries of the City of Homer. However, they have no formal role in determining how those monies will be spent. In an informal sense, such amounts to "taxation without representation." Ideally, regularly recurring sales tax contributions should reasonably be reflected by direct participation of the taxpayers in the body politic of the City of Homer.

It would be preferable to enfranchise citizens of the territory proposed for annexation in order to provide them with a formal voice in the affairs of a local government that generally affects their daily lives.

If the City of Homer's boundaries are not adjusted, the demand for establishment of additional local governmental units (cities or borough service areas) to provide services in the territory proposed for annexation will likely grow as the area's population and level of development increases. One new borough service area encompassing most of the territory proposed for annexation was created during the course of this annexation proceeding. Additionally, DCED fielded an inquiry from one of the respondents in this proceeding about the prospects of forming a "City of Diamond Ridge."

Certain aspects of the foregoing analysis suggest that the balanced best interest standard would be satisfied if all 25.64 square miles were annexed to the City of Homer. For example, doing so would extend City of Homer citizenship to residents of an area who are part of the community of Homer, who already rely on the City of Homer for a number of essential services, and who are otherwise significantly affected by that local government. It would also address, in a more comprehensive fashion, concerns over the provision of services without commensurate local tax contributions.

However, a number of other aspects relating to the standard at issue weigh against expanding the boundaries to encompass all 25.64 square miles. For example, approving the City's annexation proposal would create an enclave encompassing another entire municipal government. Further, concerns over health, safety, and general welfare are more evident in the 4.58 square miles approved for annexation. Additionally, the threat of erosion of the City of Homer's sales tax base is limited largely to Millers Landing and the Sterling Highway corridor within the territory approved for annexation by the Commission.

The Commission concludes that the balanced best interest standard is satisfied in the most favorable manner *at this time* by limiting the expansion of the City of Homer's boundaries to the 4.58 square miles approved for annexation by the Commission. Such an annexation would clearly meet the requirements set out in 3 AAC 110.140.

N. Best Interests of the State

AS 29.06.040(a) provides that the Local Boundary Commission consider the best interests of the state when it acts on any proposed municipal boundary change.⁴⁵ DCED's analysis and conclusions regarding this standard are set out on pages 346 – 348 of its Preliminary Report.

This recently enacted statutory standard and the preceding long-standing regulatory standard are essentially redundant. The redundancy will be eliminated once regulations adopted by the Commission earlier this year take effect. Nonetheless, the Commission is compelled to address this standard separately.

The previous findings and conclusions reached with respect to the standard set out in 3 AAC 110.140 apply equally to the best interests of the best interests of the state standard set out in AS 29.06.040(a).

Moreover, maximum local self-government is fostered by the Alaska Constitution. Local self-government is often enhanced when it is most proximate to the constituents of the government. Decisions are now being made in Soldotna, the seat of the Kenai Peninsula Borough, that would be better made in Homer, particularly with respect to such fundamental local services such as land use planning, fire protection, emergency medical services and road maintenance.

Moreover, annexation would allow a favorable response to requests from John Fowler, Joseph L. Lester, and Des Lester who seek inclusion of their respective properties within the City of Homer's jurisdiction. Without annexation of the 3.9 square miles recommended for annexation by DCED, the Fowler and Lester properties would not be contiguous to the corporate boundaries of the City of Homer. For reasons outlined previously in this Statement of Decision, the Commission would be disinclined to approve annexation of non-contiguous territory to the City of Homer.

⁴⁵ AS 29.06.040(a) provides that, "The commission may amend the proposed change and may impose conditions on the proposed change. If the commission determines that the proposed change, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations and is in the best interests of the state, it may accept the proposed change.

Based on the foregoing, the Commission concludes that the “best interests of the state” as set out in AS 29.06.040(a) are served to the greatest degree if the expansion of the boundaries of the City of Homer is limited *at this time* to the 4.58 square miles approved for annexation.

SECTION III ORDER OF THE COMMISSION

Based on the findings and conclusions set out in Section II of this Statement of Decision, the Local Boundary Commission notes that all of the relevant standards and requirements for annexation are satisfied (and are satisfied to the greatest degree) by the annexation to the City of Homer of the 4.58 square miles approved by the Local Boundary Commission. Accordingly, the Commission hereby amends the Petition to limit the territory approved for annexation of the following two areas described below.

Area Number One

Beginning at the Meander Corner of Sections 22 and 23, Township 6 South, Range 14 West, Seward Meridian;

thence Westerly along the 1917 GLO line of Mean High Water of Cook Inlet to the Meander Corner of Sections 15 and 22;

thence Northwesterly along the 1917 GLO line of Mean High Water of Cook Inlet to the Meander Corner of Sections 15 and 16;

thence North 2326 ft, more or less, along the line common to Sections 15 and 16 to the N 1/16 corner of Sections 15 and 16;

thence East 5280 ft, more or less, along the quarter section line to the N 1/16 corner of Sections 14 and 15;

thence East 5280 ft, more or less, along the quarter section line to the N 1/16 corner of Sections 13 and 14;

thence East 1320 ft, more or less, along the quarter section line to the NW 1/16 corner of Section 13;

thence North 1320 ft, more or less, along the quarter section line to the W 1/16 corner of Sections 12 and 13;

thence East 3960 ft, more or less, along the line common to Sections 12 and 13 to the common corner of Sections 12 and 13, Township 6 South, Range 14 West, and Sections 7 and 18, Township 6 South, Range 13 West;

thence North 100.39 ft, along the line common to said Sections 7 and 12 to the point intersecting with the North edge of the Right-of-Way of Diamond Ridge Road;

thence Northeasterly along the Northerly edge of the Right-of-Way of Skyline Drive to the west edge of its intersection with Crossman Ridge Road;

thence Northeasterly along the Northerly edge of the Right-of-Way of Crossman Ridge Road to the common corner of Lot 12 and Lot 13 Diamond Ridge Estates as per Plat No. 71-1238 HRD;

thence North 1220 ft, more or less, along the quarter section line to the E 1/16 corner of Sections 6 and 7;

thence North 990 ft, more or less, along the quarter section line to the C-N-S-SE 1/256 corner of Section 6;

thence East 1320 ft, more or less, to the N-S-S 1/256 corner of Sections 5 and 6;

thence South 330 ft, more or less, to the S-S 1/64 corner of Sections 5 and 6;

thence East 1320 ft, more or less, to the C-S-SW 1/64 corner of Section 5;

thence South 330 ft, more or less, along the quarter section line to the C-S-S-SW 1/256 corner of Section 5;

thence East 1320 ft, more or less, to the S-S-CS 1/64 corner of Section 5;

thence North 330 ft, more or less, along the N-S centerline of Section 5 to the S-CS 1/64 corner of Section 5;

thence East 660 ft, more or less, to the SW-SE 1/64 corner of Section 5;

thence South 660 ft, more or less, to the W-E 1/64 corner of Section 5;

thence West 660 ft, more or less, along the line common to Sections 5 and 8 to the 1/4 corner of Section 5 and Section 8;

thence South 660 ft, more or less, along the N-S centerline of Section 8 to the N-CN 1/64 corner of Section 8;

thence West 1320 ft, more or less, to the C-N-NW 1/64 corner of Section 8;

thence North 330 ft, more or less, to the C-N-N-NW 1/256 corner of Section 8;

thence West 1320 ft, more or less, to the N-N-N 1/256 corner of Sections 7 and 8;

thence South 3630 ft, more or less, along the line common to Sections 7 and 8 to the S 1/16 corner of Sections 7 and 8;

thence East 3363 ft, more or less, along the quarter section line to the point of intersection with the North edge of the Right-of-Way of Skyline Drive;

thence Northeasterly along the North edge of the Right-of-Way of Skyline Drive to the Southwest corner of Lot 14 Block 4 Bayview Gardens Subdivision Addition 1 as per Plat No. 76-104 HRD;

thence North 1049 ft, more or less, along the quarter section line to the CE 1/16 corner of Section 8;

thence East 1320 ft, more or less, along the E-W centerline of Section 8 to the 1/4 corner of Sections 8 and 9;

thence North 2640 ft, more or less, along the line common to Sections 8 and 9 to the common corner of Sections 4, 5, 8, and 9;

thence East 1320 ft, more or less, along the line common to Sections 4 and 9 to the W 1/16 corner of Sections 4 and 9;

thence South 1320 ft, more or less, along the quarter section line to the NW 1/16 corner of Section 9;

thence East 3960 ft, more or less, along the quarter section line to the N 1/16 corner of Sections 9 and 10;

thence continuing East 138 ft, more or less, along the matching quarter section line in Section 10 to the point of intersection with the North edge of the Right-of-Way of Skyline Drive;

thence in a Northeasterly direction along the North edge of the Right-of-Way of Skyline Drive to the East Edge of its intersection with the half Right-of-Way of Woodman Lane, said point of intersection also being on the N-S quarter section line;

thence South 1062 ft, more or less, along the quarter section line to the NW 1/16 Corner of Section 10;

thence East 1320 ft along the quarter section line to the CN 1/16 corner of Section 10

thence East 330 ft, more or less, along the quarter section line to the C-W-E-NE 1/256 corner of Section 10, said corner being common with the Southwest corner of the Fowler Tract;

thence North 1320 ft, more or less, to the W-W-E 1/256 corner of Sections 3 and 10;

thence East 2310 ft, more or less, to the common corner of Sections 2, 3, 10, and 11, said corner being Corner 5 of Kachemak City;

thence South 2635.5 ft along the line common to Sections 10 and 11 to the 1/4 corner of Sections 10 and 11, said line being common with the Corporate Limits of Kachemak City;

thence West 2639.7 ft along the E-W Centerline of Section 10 to the Center 1/4 corner of Section 10, said E-W Centerline being common with the Corporate Limits of Kachemak City;

thence South along the N-S Centerline of Section 10 to the intersection point with the center of the Right-of-Way of East End Road, said N-S Centerline being common with the Corporate Limits of Kachemak City and said intersection point being the 1/4 corner of Sections 10 and 15 and a point on the northerly boundary of the Corporate Limits of the City of Homer;

thence West 2640 ft, more or less, along the line common to Sections 10 and 15 to the common corner of Sections 9, 10, 15, and 16, said line being common with the Corporate Limits of the City of Homer;

thence West 5280 ft, more or less, along the line common to Sections 9 and 16 to the common corner of Sections 8, 9, 16, and 17, said line being common with the Corporate Limits of the City of Homer;

thence West 5280 ft, more or less, along the line common to Sections 8 and 17 to the common corner of Sections 7, 8, 17, and 18, said line being common with the Corporate Limits of the City of Homer;

thence South 2640 ft, more or less, along the line common to Sections 17 and 18 to the 1/4 corner of Section 17 and 18, said line being common with the Corporate Limits of the City of Homer;

thence West 5280 ft, more or less, along the E-W Centerline of Section 18 to the 1/4 corner of Section 18, Township 6 South, Range 13 West, and Section 13, Township 6 South, Range 14 West, said line being common with the Corporate Limits of the City of Homer;

thence West 5280 ft, more or less, along the E-W Centerline of Section 13 to the 1/4 corner of Section 13 and 14, said line being common with the Corporate Limits of the City of Homer;

thence West 5280 ft, more or less, along the E-W Centerline of Section 14 to the 1/4 corner of Section 14 and 15, said line being common with the Corporate Limits of the City of Homer;

thence South 2640 ft, more or less, along the line common to Sections 14 and 15 to the common corner of Sections 14, 15, 22, and 23, said line being common with the Corporate Limits of the City of Homer;

thence South 554 ft, more or less, along the line common to Sections 22 and 23 to the Meander Corner of Sections 22 and 23, said line being common with the Corporate Limits of the City of Homer and said corner the point of beginning;

all land located within the Homer Recording District, Third Judicial District, State of Alaska.

Area Number Two

Beginning at the Meander Corner of Sections 11 and 12, Township 6 South, Range 13 West, Seward Meridian, said corner being Corner 10 of the Corporate Limits of Kachemak City;

thence Southwesterly along the 1917 GLO mean high water line of Kachemak Bay to the meander corner of Sections 11 and 14;

thence West along the line common to Sections 11 and 14 the common corner of Sections 10, 11, 14, and 15, said line being common with the Corporate Limits of the City of Homer;

thence West along the line common to Sections 10 and 15 to the point of intersection with the centerline of the Right-of-Way of East End Road, said line being common with the Corporate Limits of the City of Homer;

thence Northeasterly along the centerline of the Right-of-Way of East End Road to its intersection with the line common to Sections 11 and 12, said portion of centerline being common with the Corporate Limits of Kachemak City and said point of intersection being Corner 9 of the Corporate Limits of Kachemak City;

thence South along the line common to Sections 11 and 12 to the Meander Corner of Sections 11 and 12, being the point of beginning;

all land located within the Homer Recording District, Third Judicial District, State of Alaska.

A map of the 4.58 square miles described above follows.



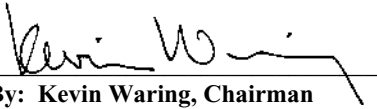
The Commission stipulates that, to the extent the 4.58 square miles approved for annexation to the City of Homer lies within the Kenai Peninsula Borough Road Service Area and the Kenai Peninsula Borough Kachemak Emergency Service Area, the annexed territory shall, under Article X, § 12 of the Constitution of the State of Alaska and other

principles of law, be detached from those borough service areas as a result of annexation of the territory to the City of Homer.


The Commission will submit a recommendation for the annexation of the 4.58 square miles in question to the Second Session of the Twenty-Second Alaska Legislature under Article X, Section 12 of the Constitution of the State of Alaska.

Approved in writing this 26th day of December 2001.

LOCAL BOUNDARY COMMISSION


By: Kevin Waring, Chairman

Attest:


Dan Bockhorst, Staff

RECONSIDERATION BY THE COMMISSION

Within twenty days after this decision becomes final under 3 AAC 110.570(g), a person may file a request for reconsideration of the decision. The request must describe in detail the facts and analyses that support the request for reconsideration.

If the Commission has taken no action on a request for reconsideration within thirty days after the decision became final under 3 AAC 110.570(g), the request is automatically denied.

If the Commission grants a request for reconsideration, the Petitioner or any respondents opposing the reconsideration will be allotted ten days from the date the request for reconsideration is granted to file a responsive brief describing in detail the facts and analyses that support or oppose the request for reconsideration.

JUDICIAL APPEAL

A judicial appeal of this decision may also be made under the Alaska Rules of Appellate Procedures, Rule 601 et seq. An appeal to the Superior Court must be made within thirty days after the last day on which reconsideration can be ordered.

Appendix B

Kachemak Area Coalition v. City of Homer
3 AN-0204626 CI
Order on Appeal

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

KACHEMAK AREA COALITION, INC.)
d/b/a CITIZENS CONCERNED ABOUT)
ANNEXATION, et al.,)
)
Appellants,)
)
STATE OF ALASKA LOCAL)
BOUNDARY COMMISSION, and)
CITY OF HOMER)
Appellees.)

CONSOLIDATED CASE NO. 3AN-02-04626 CI

ORDER ON APPEAL OF LOCAL BOUNDARY COMMISSION DECISION

BACKGROUND

A. Facts

The City of Homer ("City" or "Homer") is a first-class city. It was incorporated in 1964. Like many other Alaskan cities, its population and that of the surrounding area have steadily increased. Because of the growth in the outlying areas, the City decided to expand to incorporate some of those areas. It conducted an investigation as to the need and feasibility of annexing surrounding territory. On March 20, 2000, Homer submitted a petition to the Department of Community and Economic Development (DCED) to annex 25.64 square miles of land. This method of annexation, "legislative review annexation," is authorized under Article X, § 12 of the Alaska Constitution, AS 29.06.040(b) and AS 44.33.812(b)(2). The DCED formally accepted the petition for filing on March 29, 2000.

Official notification of the petition occurred between April 3 and April 17, 2000 through postings in the newspaper and in public places. Copies of the proposal were

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available at Homer City Hall and at the Homer Library. During this period, DCED staff met with various groups in the community to discuss annexation. On June 14 and August 24 DCED staff attended meetings on the annexation in Homer.

The deadline for filing responsive briefs to the annexation petition was June 5, 2000. By that date, the DCED received 14 responsive briefs and 168 letters, only 3 of which were favorable to the proposed annexation. On September 11, the City of Homer filed a reply brief to the responsive briefs and comments.

On April 27, 2000 a petition was submitted to Kenai Peninsula Borough requesting the formation of a service area (which included areas within Homer's proposed annexation). It is generally agreed that this petition was circulated as part of the effort to attempt to defeat annexation. On October 3, 2000, the populace living outside of Homer approved, through popular election, a proposal to establish the Kachemak Emergency Service Area ("KESA"). This service area covered approximately 200 square miles. Between January and June of 2001, the Kenai Peninsula Borough and the City of Homer entered into negotiations for the provision of fire protection services to the new service area. They entered into a 6-month contract under which Homer would provide fire services in KESA in exchange for \$106, 227.00.

Also during the spring of 2001 the state legislature enacted AS 29.35.450(c) (discussed in greater detail below), which mandates approval by a majority of municipal service area residents before a boundary to a service area is changed or the service area is abolished. This statute became effective on August 22, 2001.

On July 31, 2001, DCED staff conducted public informational meetings on the annexation proposal and made themselves available to answer the public's questions.

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The DCED completed its 412 page *Preliminary Report Regarding the City of Homer's Proposal for Annexation of an Estimated 25.64 Square Miles* on October 1, 2001. The Preliminary Report recommended that the annexation be limited to 3.3 square miles. By the November 6 deadline for comments on the Preliminary Report, the DCED had received comments from 32 individuals and groups.

Between November 8 and December 12, notice of public hearing was published in various public places in and around Homer. On November 21, DCED released its *Final Report*, increasing the recommended annexation area to 3.9 square miles. On December 14-15, the Local Boundary Commission (LBC), the Board that decides boundary issues, held a public hearing on the annexation petition. At the hearing, the City of Homer made opening and closing statements, but gave no testimony. Various respondents made statements and many concerned citizens supplied testimony. Immediately following the conclusion of the hearing, the LBC convened a decisional session for roughly two hours. The LBC amended the petition to reduce the territory to 4.58 square miles and approved annexation for that area. It released its formal statement of decision on December 26, 2001.

On January 17, 2002, the LBC held a meeting at which it considered requests for reconsideration of its decision. At the meeting, the LBC denied all the requests for reconsideration. The LBC then submitted its decision to the 23rd Legislature, which took no action on it. Thus, by operation of law, the Alaska Legislature tacitly approved the annexation of 4.58 square miles to the City of Homer.

B. The Local Boundary Commission

The Alaska Constitution, Art. X, § 12 establishes the LBC. The intention of this section was to provide an objective administrative body to make boundary decisions because,

Local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee, 'lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively.'

Fairview Pub. Utility Dist. No. 1 v. City of Anchorage, 368 P.2d 540, 543 (Alaska 1962)

(quoting Alaska Constitutional Convention Commentary on Proposed Article on Local Government, Dec. 19, 1955). To this end, the LBC has the power to consider proposed municipal boundary changes, amend the proposals, and either accept or reject those changes. AS 29.06.040.

C. Local Election v. Legislative Review

Art. X, § 12 of the Alaska Constitution establishes the Local Boundary Commission and sets out two methods by which local boundaries can be changed, Legislative Review and Local Action. Under the method of Local Action, the Constitution grants the LBC authority to establish procedures through which local boundary changes may be made. The LBC has created several procedures for local action that allow cities to annex land. These are codified at 3 AAC 110.150. Which procedure is used depends upon the type of territory proposed for annexation and its constituency.

The methods considered by the City of Homer were Legislative Review and an area wide election, established by 3 AAC 110.150(4).¹ Under the local action method, the question of annexation comes before both the residents of the annexing city and the residents of the area to be annexed in an election. The annexation passes if a majority of voters in both areas approve it. In an annexation by Legislative Review, the method chosen in this case, the City submits a proposal for annexation to the DCED. The LBC reviews the proposal and entertains public comments and hearings on the matter. If the LBC approves the proposal, it is sent to the Legislature. The Legislature then has 45 days to review and deny the petition. If both houses do not deny the petition, they tacitly approve the annexation.

D. Procedural History

The Local Boundary Commission produced its Statement of Decision on December 26, 2001. Both Kachemak Area Coalition (d/b/a Citizens Concerned About Annexation) (hereinafter CCAA) and Alaskans Opposed to Annexation (AOA) filed appeals of this decision. The appeals were consolidated into Superior Court Case No. 3AN-02-04626 Civil. Abigail Fuller joined the action as a co-appellant. During the pendency of this appeal, the Supreme Court held the City of Homer inappropriately withheld, certain documents related to the preparation of the annexation petition. See Fuller v. City of Homer, 75 P.3d 1059 (Alaska 2003). This Court ordered the parties to submit additional briefing on the effect of that decision on this case. This Court also

¹ These methods are the ones recommended by the DCED for cases in which there is a strong public need for annexation, but much resistance on the part of the residents of the area to be annexed. See Annexation to a City Government on the DCED's Local Government On-line website, available at <http://www.dced.state.ak.us/cbd/LOGON/muni/muni-cityannex.htm>.
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allowed the parties to supplement their previous briefing in light of that ruling. Oral Argument on this appeal occurred on October 29, 2003.

STANDARD OF REVIEW

The appropriate standard of review is disputed in this case. Appellants claim that this Court should apply the substantial evidence test to the LBC's decision because the LBC used facts when reaching to its decision. CCAA's Brief p. 12, Fuller's Brief p. 6. Appellees argue that approval of a petition for annexation is a matter within the LBC's discretion and thus the Court should apply the reasonable basis test. State's Brief pp. 5-6, 9, City of Homer's Corrected Brief p.5.

The Appellees are correct that the appropriate standard of review in this case is the reasonable basis test. Local boundary decisions made by the LBC involve the formulation of fundamental policy. Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92, 98 (Alaska 1974); Keane v. Local Boundary Comm'n, 893 P.2d 1239, 1241 (Alaska 1995). The LBC employs "delegated legislative authority to reach basic policy decisions." Mobil Oil Corp. 518 P.2d at 99. Therefore, if this Court "perceives in the record a reasonable basis of support for the Commission's reading of the standards and its evaluation of the evidence," it should affirm the LBC's decision. Id. The LBC's decision in such matters will be overturned only if this Court finds the LBC abused its discretion. Port Valdez Co. v. City of Valdez, 522 P.2d 1147, 1151 (Alaska 1974).

If the statute does not implicate an agency's special expertise or determination of fundamental policies, the court may use its independent judgment. Keane, 893 P.2d at 1241. The Court will also apply this independent judgment to constitutional issues,

which “should be given a reasonable and practical interpretation in accordance with common sense.” Id. at 1241-1242.

Here, the local boundary decisions made by the LBC involve the agency’s particular expertise and the formulation of fundamental policy. Therefore, reasonable basis is the appropriate standard of review for several of the issues on appeal. The decision to allow the participation of Commissioner Tesche did not involve particular expertise that is solely within the LBC’s realm of knowledge; thus, this Court will review that decision by using its independent judgment. The Court will also use this standard in considering whether the residents of KESA suffered a denial of their due process rights and whether the LBC properly considered the effect annexation would have on KESA.

DISCUSSION

A. Does AS 29.35.450 Require a Vote of the Residents of KESA?

The Appellants claim that AS 29.35.450(c)² required a vote of KESA’s residents approving the proposed boundary change before the annexation could be official.

² AS 29.35.450 states,

Service areas. (a) A service area to provide special services in a borough or unified municipality may be established, operated, altered, or abolished by ordinance, subject to (c) of this section. Special services include services not provided by the unified municipality or a higher or different level of services. Special services include services not provided by a borough on an areawide or nonareawide basis in the borough or a higher or different level of services than that provided on an areawide or nonareawide basis. A borough may include a city in a service area if

(1) the city agrees by ordinance; or

(2) approval is granted by a majority of voters residing in the city, and by a majority of voters residing inside the boundaries of the proposed service area but outside of the city.

(b) A new service area may not be established if, consistent with the purposes of Alaska Const., art. X, the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.

(c) If voters reside within a service area that provides road, fire protection, or parks and recreation services, abolishment of the service area is subject to approval by the majority of the voters residing in the service area who vote on the question. A service area that provides road, fire protection, or parks and recreation services in which voters reside may not be abolished and replaced by a larger service area unless that

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Because there was no such vote, the Appellants argue the annexation is invalid. In addition, they claim that because there was no vote, the residents of KESA experienced a denial of their due process rights. For the reasons set forth below, this Court finds these arguments unpersuasive.

1. The Authority of the Local Boundary Commission

As discussed above, the framers of the Constitution thought that local boundary decisions were better left in the hands of third parties and the state because local residents would not be objective. Thus, they gave the LBC broad powers in Art. X, § 12:

A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

This section of the Constitution establishes legislative review as the only named method of boundary change. Its preeminence is affirmed by AS 29.06.040, which states at subsection (d), “A boundary change effected under (a) and (b) of this section prevails over a boundary change initiated by local action, without regard to priority in time.” If

proposal is approved, separately, by a majority of the voters who vote on the question residing in the existing service area and by a majority of the voters who vote on the question residing in the area proposed to be included within the new service area but outside of the existing service area. A service area that provides road, fire protection, or parks and recreation services in which voters reside may not be altered or combined with another service area unless that proposal is approved, separately, by a majority of the voters who vote on the question and who reside in each of the service areas or in the area outside of service areas that is affected by the proposal. This subsection does not apply to a proposed change to a service area that provides fire protection services that would result in increasing the number of parcels of land in the service area or successor service area if the increase is no more than six percent and would add no more than 1,000 residents.

the legislature intended for AS 29.35.450(c) to apply to legislative review, as the appellants contend, it could simply have amended AS 29.06.040 with a reference to AS 29.35.450(c),³ which states,

(c) If voters reside within a service area that provides road, fire protection, or parks and recreation services, abolishment of the service area is subject to approval by the majority of the voters residing in the service area who vote on the question. A service area that provides road, fire protection, or parks and recreation services in which voters reside may not be abolished and replaced by a larger service area unless that proposal is approved, separately, by a majority of the voters who vote on the question residing in the existing service area and by a majority of the voters who vote on the question residing in the area proposed to be included within the new service area but outside of the existing service area. A service area that provides road, fire protection, or parks and recreation services in which voters reside may not be altered or combined with another service area unless that proposal is approved, separately, by a majority of the voters who vote on the question and who reside in each of the service areas or in the area outside of service areas that is affected by the proposal. This subsection does not apply to a proposed change to a service area that provides fire protection services that would result in increasing the number of parcels of land in the service area or successor service area if the increase is no more than six percent and would add no more than 1,000 residents.

Instead, the legislature left AS 29.06.040 intact with its explicit preference for annexations completed under the auspices of the LBC and legislative review.

An oft-mentioned principle of statutory construction is that all duly passed legislation is presumed to be constitutional. Kimoktoak v. State, 584 P.2d 25, 31 (Alaska 1978); See also, State, Dep't of Revenue v. Andrade, 23 P.3d 58 (Alaska 2001). If the appellants are correct and AS 29.35.450(c) were to apply in situations such as the one at bar, it would usurp the constitutionally granted powers of the LBC. Thus, because this Court assumes AS 29.35.450(c) is constitutional, the statute cannot apply to annexations

³ As the City of Homer suggests in n.20 of its Corrected Brief: The legislature, "could easily have done so by simple amendment, e.g., 'except when disapproved by the voters in an affected local service area as provided in AS 29.35.450(c).'"

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undertaken through legislative review. An in-depth reading of the statute and its legislative history also supports this conclusion.

2. The Plain Language of AS 29.35.450(c).

Statutory language should be reviewed in context. Keane v. Local Boundary Comm'n, 893 P.2d 1239, 1247 (Alaska 1995). This Court concludes AS 29.35.450(c) is not applicable to the present matter because of its plain language. The statute at issue here, ch. 31 SLA 2001, amended only AS 29.35.450, which concerns a municipality's control over its own service areas. As noted in the previous subsection, this statute does not concern legislative decisions to change municipal boundaries. The Court also notes that this statute is located within the section of statutes on Municipal Parties and Duties—not within the section on the Alteration of Municipalities and the Local Boundary Commission.

AS 29.35.450(a) plainly states, “A service area ...in a borough or unified municipality may be ... altered ... by ordinance, subject to (c) of this section” (emphasis added). Subsections are intended to modify each other and cannot be read in isolation. Because municipalities enact ordinances and not the LBC nor the legislature, the plain language of this statute suggests AS 29.35.450(c) is only applicable to boundary changes by local action. See AS 29, Chap. 25. The Homer Annexation occurred through legislative review, thus AS 29.35.450(c) does not affect it.

3. The Legislative History of AS 29.35.450(c)

The legislative committee minutes support the concept that it was municipal changes to service areas that the bill's sponsors were concerned with, not annexations

approved by the legislature. The minutes from the House Judiciary Committee hearing on February 5, 2001, are particularly enlightening:

REPRESENTATIVE CON BUNDE [sponsor of the bill] ... explained...Currently, there is some concern about a 'tyranny of the majority;' that local areas ... aren't able to maintain their level of service if the surrounding area chooses to vote them out of existence. ... [I]f both the surrounding area and the affected area agree, then reaching a majority vote would not be a problem. However, if the local [affected] area objected to proposals, it should not be subject to them simply because the surrounding areas voted in favor of the proposals.

...

REPRESENTATIVE BUNDE explained that his motivation for bringing this issue before the committee was to maintain flexibility and preserve the right of the individual faced with manipulation by voters outside his or her service area. ...[H]e did not want his local road service areas to be changed or absorbed into the municipality, i.e., voted out of existence without a majority vote of the people both inside the affected service areas and the surrounding areas.

...

WILLIAM A. GREENE, Municipal Attorney, Municipality of Anchorage ...Further, [the proposed CS] violates Article X, Section 5, of the Alaska State Constitution in that it impairs or impedes the annexation of an area into the city or another service area. ...

...

MICHAEL GATTI, Borough Attorney, Matanuska-Susitna Borough, ... mentioned that nothing in the proposed CS would preclude attempts of annexation in the Knik/Fairview area, because it is the local boundary commission that governs annexation procedures. ...

...

OCIE ADAMS ...asked whether or not the proposed CS would, by requiring a vote of the people, preclude the Anchorage Borough from annexing a portion of the Knik road service area.

...

CHAIR ROKEBERG pointed out [in response to Mr. Adams] that this particular situation appeared to be an annexation/boundary issue and was not germane to the topic of service areas.

22nd Alaska State Legislature, House Judiciary Committee, Minutes, “HB 13 – Service Areas: Voter Approval/ Tax Zones,” (February 5, 2001) (emphasis added).

Indeed, throughout this statute’s entire legislative history, not just the Feb. 5 minutes, there are numerous comments addressing the fact that this bill focuses on municipal boundary changes and aims at preventing the electorate of one area from voting to alter a service area without any input from the residents of that service area. It was outside the scope of the legislative discussion to argue, as appellants do now, that this statute could impact annexations approved by legislative review.⁴ Accordingly, even if such an interpretation was constitutional, there is no evidence (not the plain language nor legislative history) from which this Court could conclude that AS 29.35.450(c) mandates a vote of KESA residents.

B. Were the Residents of KESA Denied Due Process Because There Was No Vote?

Appellants claim that because the residents of Homer and the annexed area were not given the opportunity to vote on the proposal, they experienced a denial of their due process rights. Fuller’s Brief p. 26. They also claim the citizens affected by the annexation were denied due process because there was never an opportunity for public comment on the final annexation of 4.58 square miles. CCAA’s Brief p.36.

“As a threshold matter, due process rights are only implicated by a deprivation of liberty or property interests.” Nickerson v. University of Alaska, 975 P.2d 46. 53 (Alaska

⁴ The only time Homer’s situation was ever referred to throughout this deliberation was in the testimony given by Abigail Fuller and Sallie Dodd-Butters in their capacities as citizens and members of CCAA. Neither asserted any professional expertise on the subject matter. Although citizen comment and participation is essential to the republican process, citizens’ opinions do not and should not reflect the legislature’s intent, especially when that imputed intent would be unconstitutional.

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1999). Municipal annexations without a vote of the electorate do not in any way affect life, liberty, or property rights; nor do they deny any person due process of law:

Appellants do not point out, nor do we perceive, in what respect there has been a deprivation of 'liberty, or property, without due process of law.' The determination of what portions of a state shall be within the limits of a city involves an aspect of the broad political power of the state which has always been considered a most usual and ordinary subject of legislation. ... Those who reside or own property in the area to be annexed have no vested right to insist that annexation take place only with their consent. The subject of expansion of municipal boundaries is legitimately the concern of the state as a whole, and not just that of the local community. There has been no infringement or deprivation of rights protected by the Fourteenth Amendment.

Fairview Public Util. Dist. No. 1 v. City of Anchorage, 368 P.2d 540 (Alaska 1962).

(Holding that the annexation of a public utility district, if done in a constitutional manner, did not require a vote of the district's residents.)

The U.S. Supreme Court has also interpreted due process rights in such a fashion. In a case where a taxpayer claimed that the taxes assessed by the city, into which his land had recently been annexed by the state legislature without his vote, deprived him of his property without due process of law, the court stated,

What portion of a State shall be within the limits of a city and be governed by its authorities and its laws has always been considered to be a proper subject of legislation. ... Whether territory shall be governed for local purposes by a county, a city, or a township organization, is one of the most usual and ordinary subjects of State legislation.

Kelly v. City of Pittsburgh, 104 U.S. 78, 80-81 (1881). The Court further explained,

Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. ... The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. ... The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, ... unrestrained by any provision of the Constitution of the United States.

Hunter v. City of Pittsburgh, 207 U.S. 161, 178-79 (1907).

Appellants attempt to distinguish Fairview by noting that the Fairview court dealt with the assets and liabilities of the defunct Utility District, not the increased taxation the new residents of Homer face. Fuller's Reply p. 10. Ms. Fuller also asserts that annexation is of deep, personal interest to the people who are being annexed and thus deserves due process consideration. Id.

This distinction is misplaced. Nowhere does any court declare that residents of an annexed area necessarily have interests that must be protected to the extent Appellants propose. The DCED and LBC afforded many opportunities for the public to comment, respond, and testify about the annexation. The record before the court of public participation is impressive. An elevated legal interest does not attach merely because a person has a strong interest to a particular issue. The courts are quite clear that the boundaries of municipal governments are state issues. Local residents do not have sufficient legal interests in these matters to necessitate an elevated level of due process. Thus, in addition to there being no statutory requirement for a vote of KESA's residents, there is no equal protection requirement for such a vote.

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The second denial of due process claim the Appellants raise is that there was no opportunity for public comment on the final 4.58 square miles approved for annexation. Legislative proceedings require less due process than adjudicative proceedings. Property Owners Ass'n v. City of Ketchikan, 781 P.2d 567, 571 (Alaska 1989). Such proceedings (compared to adjudicatory proceedings) require notice and the opportunity to be heard. Id. at 572. As stated above, the public was given much opportunity to comment and be heard on the annexation petition. The original petition requested annexation of 25.64 square miles, the public was duly noticed and commented on that petition in their written responses and at the Dec. 14-15 hearing. The DCED recommended 3.3 square miles, the public commented on that recommendation at the hearing as well. The public thus had the opportunity to comment on areas both larger and smaller than the area finally approved for annexation. The public suffered no denial of its due process rights as a result of this process.

C. Was it Improper Not to Recuse Commissioner Tesche Because of an Alleged Conflict of Interest?

Alan Tesche served on the LBC during its review of Homer's Petition and subsequently voted in favor of the amended Petition. Tesche also provided legal services to the City of Homer during the time the City was preparing its Petition. In November 1999, he represented the City's Planning Commission in an appeal before the City's Board of Adjustment, relating to a city zoning ordinance with respect to the non-conforming uses of commercial property. This appeal was the conclusion of work begun in 1998. Tr. 6/27/00 p.5. That work concluded on January 28, 2000. A partner of

Tesche also did some paperwork for the City in November 1999, for which the City compensated their firm \$371.00 on December 30, 1999.

The City passed a resolution to initiate the petition process on Dec. 13, 1999, roughly one month after Tesche began his work for the City in 1999. The City filed its Petition on March 20, 2000. Tr. 6/27/00 p.5.

Appellants claim Tesche's participation was in error because of his conflict of interest. They argue Tesche should not have been allowed to participate in the decision because of the nature of the services he performed for Homer in the past and is likely to perform in the future.

In Carney v. State Bd. Of Fisheries, 785 P.2d 544 (Alaska 1990), the Supreme Court found that the focus of the common law bar on conflicts of interest "appears to be on the relationship between the public official's financial interest and the possible result of the official's action, regardless of the official's intent." Id. at 548. (Holding that the varying financial interests of Board of Fisheries members disqualified them from the decision-making process concerning subjects in which they had particular interest.)

The court in Griswold v. City of Homer also noted that appearances of impropriety should be avoided in situations regarding potential conflicts of interest. 925 P.2d 1015, 1029 (Alaska 1996). See also, Stalnaker v. Williams, 960 P.2d 590, 596 (Alaska 1998). The Griswold court set out the policy to be followed in determining the effect of a conflicted vote:

Initially, the court must determine whether a member with a disqualifying interest cast the decisive vote. If so, the ordinance must be invalidated. If the ordinance would have passed without the vote of the conflicted member, the court should examine the following three facts: (1) whether the member disclosed the interest or the other council members were fully

aware of it; (2) the extent of the member's participation in the decision; and (3) the magnitude of the member's interest.

Griswold 925 P.2d at 1029.

Four commissioners voted in favor of the amended Homer annexation proposal (the fifth commission seat was vacant at the time of the decision). Only 3 commissioners needed to vote in favor of the annexation for it to pass. Thus, Tesche did not make the deciding vote. His potential conflict therefore passes the first part of the Griswold test.

Tesche brought the potential conflict of interest to the attention of the LBC in a letter dated June 19, 2000. At a hearing on June 27, 2000, the remaining members of the LBC examined Tesche's potential conflict under both the Executive Branch Ethics Act and the Commission's bylaws and found no conflict worthy of removing Tesche from participating in the review of the Homer petition. See Tr. State of Alaska, Local Boundary Commission Meeting of June 27, 2000. At this meeting, the remaining members of the Commission voted unanimously to allow Tesche to participate in the process of reviewing Homer's annexation petition. Id. p.11. The record does not reflect that Tesche had a greater role in the discussion and decision to approve the amended proposal than any other commissioner. Tesche did not provide legal services to Homer in conjunction with the annexation proposal, rather his work centered on an administrative appeal related to zoning ordinances. All work was completed and paid for by the end of January 2000. Id. at 6. Homer submitted its annexation proposal in March. The charge for the work totaled roughly \$4000.00. Id. at 5,6. This is not a seemingly significant amount when taken in context with the whole of Tesche's business. Thus, under both

Griswold and Carney, even though Tesche received compensation from the City for his services, his participation in the annexation process was proper.

D. Does the Supreme Court's Decision in *Fuller v. City of*
Homer Affect this Appeal?

While this case was awaiting oral arguments, the Supreme Court decided Fuller v. City of Homer, 75 P.3d 1059 (Alaska 2003). The Court held the City was remiss in withholding, by claiming the deliberative process privilege, certain documents related to its preparation of the annexation petition at issue in this case. In response to the Fuller decision, this Court ordered the parties to file supplemental briefs explaining Fuller's effect and any additional documents necessary to complete the record in light of this decision.

In their briefing, the Appellants claim that in light of this ruling, the City's refusal to produce these documents constituted reversible error, or at the least required a de novo review of the withheld documents. CCAA's Response to Fuller v. City of Homer Brief p.3, See also, Fuller's Response to Fuller v. City of Homer Brief p. 3, AOA's Response to Fuller v. City of Homer Brief p.2. If the withholding of these documents constituted a procedural error resulting in injustice, the Court must remand the annexation to the LBC. Port of Valdez, 522 P.2d 1147, 1155 (Alaska 1974).

After reviewing these documents and the accompanying briefs, this Court finds that there was no error that would require a reversal of the annexation. The withheld documents were primarily department head memos. These memos contained information and numbers that were presented in a finalized version to the LBC. The differences

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between the withheld department head memos and the documents submitted to the LBC as evidence are not significant. In approving an annexation petition, the LBC must find that, “the economy within the proposed boundaries of the city include the human and financial resources necessary to provide essential city services on an efficient, cost-effective level.” 3 AAC 110.110. These documents take nothing away from the LBC's finding. Further, this court, having reviewed these documents *de novo* finds no injustice was caused by their omission that would require a remand.

E. The Annexation's Impact on KESA

Appellants' most troubling contention is that the LBC failed to consider the impact the annexation would have on the remaining territory of KESA. They contend that Homer essentially “cherry-picked” KESA. The annexation took a large percentage of KESA's population but left a majority of its territory—over 175 square miles. Thus, KESA was left in a predicament in which it had a greatly reduced tax-base yet remained almost the same size as before the annexation. The Appellants argue that the LBC should have considered the impact annexation would have on KESA before it approved the annexation. AOA's Brief pp. 5-6, Fuller's Brief p. 15, CCAA's Brief pp. 25-26.

Appellants rely on Keane v. Local Boundary Commission, where the Alaska Supreme Court held that when, “a decisional document shows on its face that an important factor was not considered, the court should remand the matter for further consideration.” 893 P.2d 1239, 1245 (Alaska 1995). In Keane, the matter before the LBC was the attempted incorporation of Pilot Point into a city. One of the applicable regulations governing the LBC's decision required the LBC to consider the

reasonableness and practicability of whether services could be adequately performed by the borough.

While the Keane court acknowledged that the LBC was not required to set forth specific findings of fact, it could not ascertain from the record whether the LBC made either a reasonableness or practicability determination of whether a service area was needed. Thus, using its independent judgment, the Court remanded the case to the LBC to make such a determination. Id. at 1245- 1246.

Appellees in the present case admit to essentially dismissing any impact the Homer annexation would have on KESA, yet at the same time they claim the issue was discussed as much as the situation warranted. State's Brief p. 19-20, Homer's Corrected Brief p. 31. The stated reason for the inattention is that the LBC and Homer maintain that KESA was formed illegally and thus did not deserve serious consideration. Homer's Corrected Brief p.31.⁵ Regardless of the motives of those who petitioned to form KESA, KESA was created and will continue to exist even if Homer annexes a portion of it. This court must assume that the remaining service area is legitimate and will be responsible after annexation for providing services within its new boundaries.

The City and the LBC are correct that there is much mention of KESA within both the DCED's Preliminary and Final Reports as well as the whole record. However, that is all there is- mention of KESA. There is no indication any discussion took place regarding the impact annexation would have on the remainder of KESA. Additionally,

⁵ See Alaska Constitution Art. X, §5 stating "[a] new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city." The Appellees contend that because annexation was possible, formation of the service area was improper.

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this issue was raised on reconsideration before the LBC, but the LBC dismissed these claims, again without discussion. See R. 3414, 3417, Tr. 1/17/02 p.7-8.

Here, the original Homer petition never focused on the effect annexation would have on KESA because KESA was not formed when the City submitted its petition. However, KESA existed when the DCED wrote its Preliminary Report. Thus, it was within the realm of the LBC's consideration of the annexation.

While 3 AAC 110.900(d) does not, contrary to Appellant's contention, require transition agreements be in place before an annexation petition is approved, this directive, like all similar regulations, is made with the purpose of enacting the mission of the LBC. "By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively." Fairview 368 P.2d at 543. It is for this reason the framers of the Alaska constitution created the LBC and for this reason that all boundary changes approved by the LBC must be in the "best interests of the state." AS 29.06.040(a).

This Court accepts as true that Homer and the Kenai Peninsula Borough agreed to an amicable transfer of assets. See Testimony of Collette Thompson, Attorney for Kenai Peninsula Borough, Tr. 12/14/01 pp. 53, 56. However, given the amount of attention focused on KESA from even before its inception, this Court finds the lack of consideration given to the effect annexation would have on KESA troubling. Mentioning KESA in passing, or in connection with the additional burdens the City planned to take on is not the same as a discussion about the impact annexation would have in view of whether the annexation was in the best interests of the state. Clearly, annexation of the entire service area was not in the state's best interests, as the LBC did not approve even the entire 25+ square miles for which Homer originally petitioned.

Because it was impossible for the City to include a transition plan for KESA at the time of its petition (since it did not yet exist), a discussion of the effect annexation would have on surrounding services areas, was warranted to ensure that the annexation was indeed in the best interests of the state. There is no evidence that any such discussion ever occurred. Thus, a remand is appropriate to ensure that the LBC considers this issue.

CONCLUSION

For the reasons stated above, AS 29.35.450(c) does not apply to the Homer annexation and thus, no vote of KESA's residents was required. Because there was no requirement for a vote to approve the annexation and because the residents of KESA and Homer were given the opportunity to comment on the proposed annexation, there was no denial of the right to due process. The Commission did not err when it allowed Commissioner Tesche to be a part of the annexation proceedings. A review of the documents shared as a result of the Supreme Court's recent decision in Fuller v. City of Homer did not indicate any omission of evidence requiring a remand. However, the LBC erred when it failed to consider the impact annexation would have on KESA.

For the reasons expressed in this opinion, Homer's amended annexation petition is REMANDED to the Local Boundary Commission to discuss the impact of annexation on KESA. All other aspects of the LBC's decision are AFFIRMED.

DATED this 4th day of December 2003, in Anchorage, Alaska.



Mark Rindner
Superior Court Judge

certify that on December 5, 2003
of the above was mailed to each of the following at
their addresses of record:

Fuller Vardor Erwin Tanis
Chandler



Administrative Assistant

Appendix C

Title 29 Chapter 06. Alteration of Municipalities **Article 2. Annexation and Detachment**

3 AAC 110.090 – 3 AAC 110.150 **Article 3 Standards for Annexation to Cities**

3 AAC 110.900 – 3 AAC 110.990 **Article 13 General Provisions**

Chapter 06. Alteration of Municipalities

Article 2. Annexation and Detachment

Section

- | | | | |
|------|--|------|-------------|
| 040. | Local Boundary Commission | 060. | Application |
| 050. | Annexation of military
reservations | | |

Sec. 29.06.040. Local Boundary Commission

(a) The Local Boundary Commission may consider any proposed municipal boundary change. The commission may amend the proposed change and may impose conditions on the proposed change. If the commission determines that the proposed change, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations and is in the best interests of the state, it may accept the proposed change. Otherwise it shall reject the proposed change. A Local Boundary Commission decision under this subsection may be appealed under AS 44.62 (Administrative Procedure Act).

(b) The Local Boundary Commission may present a proposed municipal boundary change to the legislature during the first 10 days of a regular session. The change becomes effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

(c) In addition to the regulations governing annexation by local action adopted under AS 44.33.812, the Local Boundary Commission shall establish procedures for annexation and detachment of territory by municipalities by local action. The procedures established under this subsection must include a provision that

(1) a proposed annexation and detachment must be approved by a majority of votes on the question cast by voters residing in the area proposed to be annexed or detached;

(2) municipally owned property adjoining the municipality may be annexed by ordinance without voter approval; and

(3) an area adjoining the municipality may be annexed by ordinance without an election if all property owners and voters in the area petition the governing body.

(d) A boundary change effected under (a) and (b) of this section prevails over a boundary change initiated by local action, without regard to priority in time. (§ 5 ch 74 SLA 1985; am § 14 ch 58 SLA 1994; am § 36 ch 30 SLA 1996; am § 29 ch 58 SLA 1999; am § 3 ch 86 SLA 1999)

Effect of amendments. — The first 1999 amendment, effective July 1, 1999, made a section reference substitution in the introductory language of subsection (c).

The second 1999 amendment, effective September 28, 1999, rewrote subsection (a).

The 1996 amendment, effective May 16, 1996, inserted “must” in the second sentence of subsection (c).

The 1994 amendment, effective August 22, 1994, in subsection (a), in the second sentence, substituted “amend” for “alter the boundaries” and deleted “as altered” at the end.

Cross References. — For further provisions relating to Local Boundary Commission procedures, see AS 44.33.810 - 44.33.828.

Notes to Decisions - Defining boundaries is a legislative function. —

The creation of municipalities, and the defining of the extent of the boundaries thereof, involve the exercise of legislative, not judicial, power. *Town of Fairbanks v. Barrack*, 282 F. 417 (9th Cir. 1922), cert. denied, 261 U.S. 615, 43 S. Ct. 361, 67 L. Ed. 828 (1923); *In re Annexation to City of Anchorage*, 146 F. Supp. 98 (D. Alaska 1956), decided under former, similar law.

Expansion of municipal boundaries is matter of statewide concern.

— Those who reside or own property in the area to be annexed have no vested right to insist that annexation take place only with their consent. The subject of expansion of municipal boundaries is legitimately the concern of the state as a whole, and not just that of the local community. *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, Sup. Ct. Op. No. 61 (File Nos. 69, 71), 368 P.2d 540 (Alaska), appeal dismissed and cert. denied, 371 U.S. 5, 83 S. Ct. 39, 9 L. Ed. 2d 49 (1962), decided under former, similar law.

Annexation procedure may be changed. — The state may permit residents of local communities to determine annexation questions at an election. But when this has been done, the state is not irrevocably committed to that arrangement. If the citizens of the state, in adopting a constitution, decide that it is in the public interest to establish another election procedure, there is no constitutional obstacle to that course of action. *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, Sup. Ct. Op. No. 61 (File Nos. 69, 71), 368 P.2d 540 (Alaska), appeal dismissed and cert. denied, 371 U.S. 5, 83 S. Ct. 39, 9 L. Ed. 2d 49 (1962), decided under former, similar law.

One proceeding for annexing several tracts. — See *In re Town of Sitka*, 11 Alaska 201 (1946), decided under former, similar law.

Areas in public utility district may be annexed. — The fact that the areas are embraced within a public utility district constitutes no bar to annexation. *In re Annexation to City of Anchorage*, 129 F. Supp. 551 (D. Alaska 1955), decided under former, similar law. See *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, Sup. Ct. Op. No. 61 (File Nos. 69, 71), 368 P.2d 540 (Alaska), appeal dismissed and cert. denied, 371 U.S. 5, 83 S. Ct. 39, 9 L. Ed. 2d 49 (1962), decided under former, similar law.

Consent of voters in district required if annexation proceeds under this article. — The provision of former AS 42.35.370 providing for dissolution of a utility district with the consent of the voters when "the whole or the integral part of a district becomes annexed to an incorporated city" has application only where annexation takes place under the petition-election procedure of this article and has no application where annexation takes place under a different method established by Alaska Const., art. X, § 12. *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, Sup. Ct. Op. No. 61 (File Nos. 69, 71), 368 P.2d 540 (Alaska), appeal dismissed and cert. denied, 371 U.S. 5, 83 S. Ct. 39, 9 L. Ed. 2d 49 (1962), decided under former, similar law.

Collateral references. — 56 Am. Jur. 2d, *Municipal Corporations, Counties, and Other Political Subdivisions*, §§ 55-80, 137.

62 C. J. S., *Municipal Corporations*, §§ 42-46.

Capacity to attack the fixing or extension of municipal limits or boundary. 13 ALR2d 1279; 17 ALR5th 195.

Proper remedy or procedure for attacking legality of proceedings annexing territory to municipal corporation. 18 ALR2d 1255.

What zoning regulations are applicable to territory annexed to a municipality. 41 ALR2d 1463.

What land is contiguous or adjacent to municipality so as to be subject to annexation. 49 ALR3d 589; 64 ALR3d 187.

Right of one governmental subdivision to challenge annexation proceedings by another such subdivision. 17 ALR5th 195.

Sec. 29.06.050. Annexation of military reservations

A military reservation may be annexed to a municipality in the same manner as prescribed for other territory under AS 29.06.040. If a city in a borough annexes a military reservation under this section, the area encompassing the military reservation automatically is annexed to the borough in which the city is located. (§ 5 ch 74 SLA 1985)

Sec. 29.06.060. Application

AS 29.06.040 - 29.06.060 apply to home rule and general law municipalities. (§ 5 ch 74 SLA 1985)

Title 29 Alaska Statutes

ARTICLE 3. STANDARDS FOR ANNEXATION TO CITIES.

Section

- 90. Needs of the territory
- 100. Character
- 110. Resources
- 120. Population
- 130. Boundaries
- 135. Best interests of state
- 140. Legislative review
- 150. Local action

3 AAC 110.090. NEEDS OF THE TERRITORY. (a) The territory must exhibit a reasonable need for city government. In this regard, the commission may consider relevant factors, including

(1) existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city;

(2) existing or reasonably anticipated health, safety, and general welfare conditions;

(3) existing or reasonably anticipated economic development;

(4) adequacy of existing services;

(5) extraterritorial powers of the city to which the territory is proposed to be annexed and extraterritorial powers of nearby municipalities; and

(6) whether residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of services and facilities provided by the annexing city.

(b) Territory may not be annexed to a city if essential city services can be provided more efficiently and more effectively by another existing city or by an organized borough on an areawide basis or non-areawide basis, or through an existing borough service area.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 44.33.812

3 AAC 110.100. CHARACTER. The territory must be compatible in character with the annexing city. In this regard, the commission may consider relevant factors, including the

(1) land use and subdivision platting;

(2) salability of land for residential, commercial, or industrial purposes;

(3) population density;

(4) cause of recent population changes; and

(5) suitability of the territory for reasonably anticipated community purposes.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 44.33.812

3 AAC 110.110. RESOURCES. The economy within the proposed boundaries of the city must include the human and financial resources necessary to provide essential city services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including the

- (1) reasonably anticipated functions of the city in the territory being annexed;
- (2) reasonably anticipated new expenses of the city that would result from annexation;
- (3) actual income and the reasonably anticipated ability to generate and collect local revenue and income from the territory;
- (4) feasibility and plausibility of those aspects of the city's anticipated operating and capital budgets that would be affected by the annexation through the third full fiscal year of operation after annexation;
- (5) economic base of the city after annexation;
- (6) property valuations in the territory proposed for annexation;
- (7) land use in the territory proposed for annexation;
- (8) existing and reasonably anticipated industrial, commercial, and resource development;
- (9) personal income of residents in the territory and in the city; and
- (10) need for and availability of employable skilled and unskilled persons to serve the city as a result of annexation.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 44.33.812

3 AAC 110.120. POPULATION. The population within the proposed boundaries of the city must be sufficiently large and stable to support the extension of city government. In this regard, the commission may consider relevant factors, including

- (1) total census enumeration;
- (2) duration of residency;
- (3) historical population patterns;
- (4) seasonal population changes; and
- (5) age distributions.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 44.33.812

3 AAC 110.130. BOUNDARIES. (a) The proposed boundaries of the city must include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including

- (1) land use and ownership patterns;
- (2) population density;
- (3) existing and reasonably anticipated transportation patterns and facilities;
- (4) natural geographical features and environmental factors; and
- (5) extraterritorial powers of cities.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that territory that is not contiguous to the annexing city, or that would create enclaves in the annexing city, does not include all land and water necessary to allow for the full development of essential city services on an efficient, cost-effective level.

(c) The proposed boundaries of the city must include only that area comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation.

(d) The proposed boundaries of the city may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in 3 AAC 110.090 - 3 AAC 110.135.

(e) If a petition for annexation to a city describes boundaries overlapping the boundaries of an existing organized borough, the petition for annexation must also address and comply with the standards and procedures for either annexation of the enlarged city to the existing organized borough, or detachment of the enlarged city from the existing organized borough. If a petition for annexation to a city describes boundaries overlapping the boundaries of another existing city, the petition for annexation must also address and comply with the standards and procedures for detachment of territory from a city, merger of cities, or consolidation of cities.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 44.33.812

3 AAC 110.135. BEST INTERESTS OF STATE. In determining whether annexation to a city is in the best interests of the state under AS 29.06.040(a), the commission may consider relevant factors, including whether annexation

- (1) promotes maximum local self-government;
- (2) promotes a minimum number of local government units; and
- (3) will relieve the state government of the responsibility of providing local

services.

(Eff. 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 44.33.812

3 AAC 110.140. LEGISLATIVE REVIEW. Territory that meets the annexation standards specified in 3 AAC 110.090 - 3 AAC 110.135 may be annexed to a city by the legislative review process if the commission also determines that any one of the following circumstances exists:

- (1) the territory is an enclave surrounded by the annexing city;
- (2) the health, safety, or general welfare of city residents is or will be endangered by conditions existing or potentially developing in the territory, and annexation will enable the city to regulate or control the detrimental effects of those conditions;
- (3) the extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the boundaries of the city;

(4) residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of city government without commensurate tax contributions, whether these city benefits are rendered or received inside or outside the territory, and no practical or equitable alternative method is available to offset the cost of providing these benefits;

(5) annexation of the territory will enable the city to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the city;

(6) repealed 5/19/02;

(7) annexation of the territory will promote local self-government with a minimum number of government units;

(8) annexation of the territory will enhance the extent to which the existing city meets the standards for incorporation of cities, as set out in AS 29.05 and 3 AAC 110.005 - 3 AAC 110.042;

(9) the commission determines that specific policies set out in the Constitution of the State of Alaska or AS 29.04, 29.05, or 29.06 are best served through annexation of the territory by the legislative review process.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 44.33.812

3 AAC 110.150. LOCAL ACTION. Territory contiguous to the annexing city, that meets the annexation standards specified in 3 AAC 110.090 - 3 AAC 110.135 and has been approved for local action annexation by the commission, may be annexed to a city by any one of the following actions:

(1) city ordinance if the territory is wholly owned by the annexing city;

(2) city ordinance and a petition signed by all of the voters and property owners of the territory;

(3) approval by a majority of voters residing in the territory voting on the question at an election;

(4) approval by a majority of the aggregate voters who vote on the question within the area proposed for annexation and the annexing city;

(5) approval by a majority of the voters who vote on the question within the annexing city if the territory is uninhabited.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 44.33.812

ARTICLE 13. GENERAL PROVISIONS.

Section

- 900. Transition
- 910. Statement of non-discrimination
- 920. Determination of community
- 970. Determination of essential city or borough services
- 980. Determination of best interests of the state
- 990. Definitions

3 AAC 110.900. TRANSITION. (a) A petition for incorporation, annexation, merger, or consolidation must include a practical plan that demonstrates the capacity of the municipal government to extend essential city or essential borough services into the territory proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for city reclassification under AS 29.04, or municipal detachment or dissolution under AS 29.06, must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after city reclassification, detachment, or dissolution.

(b) Each petition must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, and other appropriate entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.

(c) Each petition must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area wholly or partially included in the area proposed for the change, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.

(d) Before approving a proposed change, the commission may require that all boroughs, cities, unorganized borough service areas, or other entities wholly or partially included in the area of the proposed change execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.06.090; AS 29.06.130; AS 29.04.040; AS 29.06.150; AS 29.05.100; AS 29.06.160; AS 29.05.130; AS 44.33.812; AS 29.05.140; AS 29.06.040

3 AAC 110.910. STATEMENT OF NON-DISCRIMINATION. A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

Authority: Art. X, sec. 12, Ak Const.; AS 44.33.812

3 AAC 110.920. DETERMINATION OF COMMUNITY. (a) In determining whether a settlement comprises a community, the commission may consider relevant factors, including whether the

- (1) settlement is inhabited by at least 25 individuals;
- (2) inhabitants reside permanently in a close geographical proximity that allows frequent personal contacts and comprise a population density that is characteristic of neighborhood living; and
- (3) inhabitants residing permanently at a location are a discrete and identifiable social unit, as indicated by such factors as school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial establishments and other service centers.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that a population does not constitute a community if

- (1) public access to or the right to reside at the location of the population is restricted;
- (2) the population is adjacent to a community and is dependent upon that community for its existence; or
- (3) the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 44.33.812

3 AAC 110.970. DETERMINATION OF ESSENTIAL CITY OR BOROUGH SERVICES. (a) If a provision of this chapter provides for the identification of essential borough services, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that, as determined by the commission,

- (1) are reasonably necessary to the territory; and
 - (2) cannot be provided more efficiently and more effectively
 - (A) through some other agency, political subdivision of the state, regional educational attendance area, or coastal resource service area; or
 - (B) by the creation or modification of some other political subdivision of the state, regional educational attendance area, or coastal resource service area.
- (b) The commission may determine essential borough services to include
- (1) assessing and collecting taxes;
 - (2) providing primary and secondary education;
 - (3) planning, platting, and land use regulation; and

(4) other services that the commission considers reasonably necessary to meet the borough governmental needs of the territory.

(c) If a provision of this chapter provides for the identification of essential city services, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that, as determined by the commission,

(1) are reasonably necessary to the community; and

(2) cannot be provided more efficiently and more effectively

(A) through some other agency, political subdivision of the state, regional educational attendance area, or coastal resource service area; or

(B) by the creation or modification of some other political subdivision of the state, regional educational attendance area, or coastal resource service area.

(d) The commission may determine essential city services to include

(1) levying taxes;

(2) for a city in the unorganized borough, assessing and collecting taxes;

(3) for a first class or home rule city in the unorganized borough, providing primary and secondary education in the city;

(4) public safety protection;

(5) planning, platting, and land use regulation; and

(6) other services that the commission considers reasonably necessary to meet the local governmental needs of the community.

(Eff. 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.05.100; AS 29.06.450; AS 29.04.040; AS 29.06.040; AS 29.06.500; AS 29.05.011; AS 29.06.090; AS 44.33.812; AS 29.05.031; AS 29.06.130

3 AAC 110.980. DETERMINATION OF BEST INTERESTS OF THE STATE. If a provision of AS 29 or this chapter requires the commission to determine whether a proposed municipal boundary change or other commission action is in the best interests of the state, the commission will make that determination on a case-by-case basis, in accordance with applicable provisions of the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, and this chapter, and based on a review of

(1) the broad policy benefit to the public statewide; and

(2) whether the municipal government boundaries that are developed serve

(A) the balanced interests of citizens in the area proposed for change;

(B) affected local governments; and

(C) other public interests that the commission considers relevant.

(Eff. 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 29.05.100; AS 29.06.450; AS 29.04.040; AS 29.06.040; AS 29.06.500; AS 29.05.011; AS 29.06.090; AS 44.33.812; AS 29.05.031; AS 29.06.130

3 AAC 110.990. DEFINITIONS. Unless the context indicates otherwise, in this chapter

(1) "borough" means a general law borough, a home rule borough, or a unified municipality;

(2) "coastal resource service area" means a service area established and organized under AS 29.03.020 and AS 46.40.110 - 46.40.180;

(3) "commission" means the Local Boundary Commission;

(4) "commissioner" means the commissioner of community and economic development;

(5) "community" means a social unit comprised of 25 or more permanent residents as determined under 3 AAC 110.920;

(6) "contiguous" means, with respect to territories and properties, adjacent, adjoining, and touching each other;

(7) "department" means the Department of Community and Economic Development;

(8) "mandatory power" means an authorized act, duty, or obligation required by law to be performed or fulfilled by a municipality in the course of its fiduciary obligations to citizens and taxpayers; "mandatory power" includes one or more of the following:

(A) assessing, levying, and collecting taxes;

(B) providing education, public safety, public health, and sanitation services;

(C) planning, platting and land use regulation;

(D) conducting elections; and

(E) other acts, duties, or obligations required by law to meet the local governmental needs of the community;

(9) "model borough boundaries" means those boundaries set out in the commission's publication Model Borough Boundaries, revised as of June 1997 and adopted by reference;

(10) "permanent resident" means a person who has maintained a principal domicile in the territory proposed for change under this chapter for at least 30 days immediately preceding the date of acceptance of a petition by the department, and who shows no intent to remove that principal domicile from the territory at any time during the pendency of a petition before the commission;

(11) "political subdivision" means a borough or city organized and operated under state law;

(12) "property owner" means a legal person holding a vested fee simple interest in the surface estate of any real property including submerged lands; "property owner" does not include lienholders, mortgagees, deed of trust beneficiaries, remaindermen, lessees, or holders of unvested interests in land;

(13) "regional educational attendance area" means an educational service area established and organized under AS 14.08 and AS 29.03.020;

(14) "witnesses with expertise in matters relevant to the proposed change" means individuals who are

(A) specialists in relevant subjects, including municipal finance, municipal law, public safety, public works, public utilities, and municipal planning; or

(B) long-standing members of the community or region that are directly familiar with social, cultural, economic, geographic, and other characteristics of the community or region.

(Eff. 7/31/92, Register 123; am 5/19/02, Register 162); Authority: Art. X, sec. 12, Ak Const.; AS 44.33.812

Editor's note: The Local Boundary Commission's publication *Model Borough Boundaries*, adopted by reference in 3 AAC 110.990, is on file at the offices of the Local Boundary Commission staff, Department of Community and Economic Development, 550 W. 7th Ave., Suite 1770, Anchorage, Alaska, and is available at the web site of the Department of Community and Economic Development, at www.dced.state.ak.us/cbd/lbc/lbc.htm.

Appendix D

Glossary

Glossary

This glossary lists terms and acronyms that are used in this Remand Preliminary Report or that otherwise relate to municipal boundary changes that have particular meanings. Unless the context in which those terms and acronyms listed below are used in these proceedings suggests otherwise, they are defined as follows:

“Amended Petition” refers to the March 20, 2000, proposal for annexation entitled *A Petition by the City of Homer for Annexation to the City of territory West, North & East of the current City Limits*, as amended by the Local Boundary Commission on December 26, 2001. The original Petition sought annexation of an estimated 25.64 square miles; the amended Petition granted annexation of 4.58 square miles under the legislative review method authorized by Article X, § 12 of the Constitution of the State of Alaska, AS 29.06.040(b), and AS 44.33.812(b)(2).

“Appellants” refers to the individuals and entities that appealed to Superior Court, the Local Boundary Commission’s decision of December 26, 2001, approving annexation of 4.58 square miles. Those individuals and entities consisted of Kachemak Area Coalition, Inc., doing business as Citizens Concerned About Annexation; Alaskan’s Opposed to Annexation,” Vi Jerrell, Doris Cabana, *et al.*; and Abigail Fuller.

“Appellees” are entities that filed a response to the legal brief filed by the appellants. Those entities consisted of the Local Boundary Commission (represented by the Alaska Department of Law) and the City of Homer.

“Annexation” is, in general terms, the expansion of the jurisdictional boundaries of an existing city government or borough government. In this proceeding, the term may also refer to the 4.58 square miles annexation to the City of Homer that took effect March 20, 2002.

“Annexation Correspondents” means the 168 individuals who submitted timely letters to the Local Boundary Commission concerning the original annexation proposal by the deadline of June 5, 2000. They consisted of the following:

1. Dorothy R. Cline, a three-page letter opposing annexation, May 8, 2000.
2. Michael S. Cline, a three-page letter opposing annexation, May 8, 2000.
3. Marlaina Thiel, a one-page letter and four-page paper concerning annexation, May 3, 2000.
4. Ken & Nancy Branch a three-page letter opposing annexation, June 5, 2000.
5. Joanne Collins, Anchor Point Advisory Planning Commission, one-page letter opposing annexation.
6. Jerry Vantrease, two-page letter opposing annexation, June 5, 2000.
7. Robert H. Tripp, two-page letter opposing annexation, June 5, 2000.
8. Marti and Frederick Anderson a one-page letter opposing annexation, May 5, 2000.
9. Raymond L. Bellamy, a one-page letter opposing annexation, May 9, 2000.

10. Captain Leroy G. Krumm, a three-page letter opposing annexation, May 12, 2000.
11. Captain Leroy G. Krumm, a three-page letter opposing annexation, June 2, 2000.
12. Kathy Hill, a one-page letter opposing annexation, May 9, 2000.
13. Larry Smith, Objective Annexation Review a three-page letter opposing annexation (OP ED) May 9, 2000.
14. Hardin & Joan Terrell, a one-page letter opposing annexation, May 11, 2000.
15. Everett Richards, a two-page letter supporting annexation, May 12, 2000.
16. Randall L. Yount and Amy L. Kelp, a one-page letter opposing annexation, May 24, 2000.
17. Evan and Virginia Cundiff, a three-page letter opposing annexation, May 12, 2000.
18. Rev. Richard Olson, a two-page letter opposing annexation, May 16, 2000.
19. Allen Thomas, a one-page letter opposing annexation, June 2, 2000.
20. Linda S. Reinhart, a four-page letter opposing annexation, May 15, 2000.
21. Mildred M. Martin, a two-page letter opposing annexation, May 16, 2000.
22. Tom Keffer, a two-page letter opposing annexation, May 16, 2000.
23. Marsha Korpi, a two-page letter opposing annexation, May 16, 2000.
24. Bill Aberle, a one-page letter opposing annexation, May 15, 2000.
25. Bill Aberle, a one-page letter opposing annexation, May 24, 2000.
26. Mr. and Mrs. Rolland Eggert, a two-page letter opposing annexation, May 16, 2000.
27. Hardin Terrell, a one-page letter opposing annexation, May 24, 2000.
28. Mary Griswold, a six-page letter opposing annexation, May 17, 2000.
29. Nancy Hillstrand, a three-page letter opposing annexation, May 22, 2000.
30. Paul A. Carlson, a two-page letter opposing annexation, May 18, 2000.
31. Jim and Beverly Clauss, a one-page letter opposing annexation, May 19, 2000.
32. Sally Fisher, a one-page letter opposing annexation, May 22, 2000.
33. Diana Sedor, a one-page letter opposing annexation, May 18, 2000.
34. Virginia Tornes & Larry Zuccaro, a one-page letter supporting annexation, May 22, 2000.
35. Charles & Beverly Buck, a one-page letter opposing annexation, May 22, 2000.
36. LaRene and Lawrence Rogers, a one-page letter opposing annexation, April 14, 2000.
37. City of Kachemak, resolution 2000-03, requesting that the City of Kachemak be excluded from any annexation to the City of Homer, April 17, 2000.
38. Harry Wilson, a one-page letter opposing annexation, April 12, 2000.
39. Terry Jones, (Kachemak Auto Body Body and Paint) a one-page letter opposing annexation, April 17, 2000.
40. Ann and Dick Koskovich, a one-page letter opposing annexation, April 24, 2000.
41. Dana and Becky Hofseth, a one-page letter opposing annexation, May 23, 2000.
42. Joan Hoyt, a one-page letter opposing annexation, May 23, 2000.

43. Ero S. and Marie E. Walli, a four-page letter opposing annexation, June 2, 2000.
44. Mr. & Mrs. Leonard Gross, a two-page letter opposing annexation, May 24, 2000.
45. Bob Barnett, a one-page letter supporting annexation, May 22, 2000.
46. Jim Darling, a two-page letter opposing annexation, May 22, 2000.
47. Larsen and Nadya Klingel a two-page letter with 1 photograph opposing annexation, May 31, 2000.
48. Ron and Diane Poston, a two-page letter opposing annexation with one-page attachment, May 24, 2000.
49. Ned West, a one-page letter opposing annexation, May 22, 2000.
50. Joanne Collins, Anchor Point Advisory Planning Commission, a one-page letter opposing annexation, May 30, 2000.
51. J. Eve Cook, a two-page letter opposing annexation, May 24, 2000.
52. Terry Evans, a one-page letter opposing annexation, May 24, 2000.
53. Roy D. Evans, Jr., a one-page letter opposing annexation, May 26, 2000.
54. Gladys E. and James W. Stewart, a one-page letter opposing annexation, May 24, 2000.
55. Robert E. Archibald, a two-page letter opposing annexation, May 31, 2000.
56. Timothy C. Fuller, a one-page letter opposing annexation, May 26, 2000
57. Abigail Fuller, a two-page letter regarding denial of access to public records, May 9, 2000.
58. J. Roberta Harris, a two-page letter opposing annexation, May 30, 2000.
59. James J. Lempe and Linda S. Lempe, a two-page letter opposing annexation, June 5, 2000.
60. Arn & Kathy Johnson,, a one-page letter opposing annexation, May 25, 2000.
61. Capt. Jeff Sharp, a one-page letter opposing annexation, May 31, 2000.
62. Kim Sharp, a one-page letter opposing annexation, May 31, 2000.
63. Roy L. Morris, a one-page letter opposing annexation, May 30, 2000.
64. Edward B. Todd DDS, and Janice Todd, RN a four-page letter opposing annexation, May 30, 2000.
65. Rich and Sonja Corazza, a three-page letter opposing annexation, May 31, 2000.
66. Kate Gill, a one-page letter opposing annexation, May 31, 2000.
67. Judith Rothstein, a one-page letter opposing annexation, May 31, 2000.
68. Fred W. Yenney, Jr. and Eileen Yenney, a one-page letter opposing annexation, May 30, 2000.
69. Paul Field, a one-page letter opposing annexation, May 31, 2000.
70. Randel Jones, a one-page letter opposing annexation, May 30, 2000.
71. Mary Olson, a three-page letter, with 50 photographs, opposing annexation, June 1, 2000.
72. Betsy Pitzman, a three-page letter opposing annexation, June 1, 2000.
73. Henry J. Reinhart, a three-page letter opposing annexation, May 31, 2000.
74. Douglas & Johanna Fraiman, a one-page letter opposing annexation, June 2, 2000.
75. Carl Glanville, a one-page letter opposing annexation, June 1, 2000.
76. Loren and Carrie Kauffman, a two-page letter opposing annexation, May 31, 2000.

77. James W. Kienitz, a one-page letter opposing annexation, June 2, 2000.
78. Dayton L. Butters, a four-page letter opposing annexation, May 31, 2000.
79. Valerie Byrd, a one-page letter opposing annexation on behalf of The Kachemak Group, May 30, 2000.
80. R. M. Daly, a one-page letter opposing annexation, June 1, 2000.
81. David D. Daly, a one-page letter opposing annexation, June 1, 2000.
82. Jack Polster, a one-page letter opposing annexation, May 30, 2000.
83. Laura A. Barton, a three-page letter opposing annexation, May 31, 2000.
84. Dave & Eileen Becker, a two-page letter opposing annexation, June 1, 2000.
85. Sharon Bouman, a one-page letter opposing annexation, June 1, 2000.
86. Patricia A. Brennan a one-page letter opposing annexation, May 31, 2000.
87. Deborah S. Smith, a four-page letter opposing annexation, June 5, 2000.
88. Gay and David Fraker one-page letter opposing annexation, June 1, 2000.
89. Emily Koskovich, a one-page letter opposing annexation, June 1, 2000.
90. Patricia Hammond-Krumm, a one-page letter opposing annexation, June 2, 2000.
91. Ruth Longhenry, a one-page letter opposing annexation, June 1, 2000.
92. Leonard P. and Laura Miller, a one-page letter opposing annexation, June 5, 2000.
93. Karen Northrop and Doug Reid, a one-page letter opposing annexation, June 2, 2000
94. Paul Pellegrini, a two-page letter opposing annexation, June 5, 2000.
95. Rebecca Ravin, a one-page letter opposing annexation, June 2, 2000.
96. Dean Ravin, a one-page letter opposing annexation, June 2, 2000.
97. Dean H. Ravin, a one-page letter opposing annexation, June 2, 2000.
98. David Schroer, a one-page letter opposing annexation, June 5, 2000.
99. Douglas A. Stark, a one-page letter opposing annexation, June 1, 2000.
100. Wayne and Linda Watson, a two-page letter opposing annexation, May 31, 2000.
101. James L. Calkins, a one-page letter opposing annexation, June 5, 2000.
102. Daniel and Elaine Chalup, a one-page letter opposing annexation, June 2, 2000.
103. Darrell Walker, a one-page letter opposing annexation, June 5, 2000.
104. Mary F. Deihl, a two-page letter opposing annexation, June 2, 2000.
105. John Glanville, a one-page letter opposing annexation, May 28, 2000.
106. Marilyn C. Hendren, a one-page letter opposing annexation, June 2, 2000.
107. Roberta Highland, a three-page letter opposing annexation, June 1, 2000.
108. Robert O. Lucas, a two-page letter opposing annexation, June 2, 2000.
109. Duane B. Perk, a one-page letter opposing annexation, June 1, 2000.
110. Rev. Richard Olson, an informal petition opposing annexation (signed by three people), June 1, 2000
111. Cheryl Rykaczewski, a two-page letter opposing annexation, June 2, 2000.
112. Steve Rykaczewski, a three-page letter opposing annexation, June 2, 2000.
113. Audrey Thomas, a one-page letter opposing annexation, June 2, 2000.
114. Rieta Walker, a one-page letter opposing annexation, June 5, 2000.
115. Allan Wetsel and Elizabeth Wetsel, a two-page letter opposing annexation, June 2, 2000.
116. David Beer, a one-page letter opposing annexation, June 2, 2000.

117. Jim Claus, a one-page letter opposing annexation, June 2, 2000.
118. Beverly D. Clauss, a one-page letter opposing annexation, May 18, 2000.
119. Beverly Clauss, a one-page letter opposing annexation, June 2, 2000.
120. Kathy (Tillman) Corp, a two-page letter opposing annexation, June 2, 2000.
121. Frank S. Griswold, a three-page letter opposing annexation, and a seven-page attachment, June 5, 2000.
122. Brad Faulkner, (President, Alaska Custom Seafood) a five-page letter opposing annexation, June 2, 2000.
123. Amelia Geusen, a one-page letter opposing annexation, June 2, 2000.
124. Gary and Terri Lyon, a two-page letter opposing annexation, June 2, 2000.
125. Dennis & Kathy Oakland, a 6-page letter opposing annexation, and a 6-page attachment, June 2, 2000.
126. Marvin L. Peters, a one-page letter opposing annexation, June 5, 2000.
127. Cris Rideout, a one-page letter proposing requirements and conditions for annexation, June 2, 2000.
128. Sandy Stark, a one-page letter opposing annexation, June 2, 2000.
129. Allen Thomas, a one-page letter opposing annexation, June 2, 2000.
130. Kristi Sherman, University of Alaska Statewide Office of Land Management, a one-page letter opposing annexation, June 2, 2000.
131. Kristi Sherman, a one-page letter that the University of Alaska Office of Land Management had not adopted a position supporting or opposing annexation, June 5, 2000.
132. David Van Liere, a one-page letter opposing annexation, June 2, 2000.
133. Veronica Van Liere, a one-page letter opposing annexation, June 2, 2000.
134. Linda Eason, a two-page letter opposing annexation, June 5, 2000.
135. John Farmer and Joyce Keele, a one-page letter opposing annexation, June 5, 2000.
136. Mary Griswold, a two-page letter opposing annexation, May 8, 2000.
137. Roger and Jody Pryor, a one-page letter opposing annexation, June 5, 2000.
138. Kent Redmon, Board Member of Diamond View Estates Homeowners Association, a three-page letter opposing annexation, June 5, 2000.
139. Capt. Al Rusk and Carla Rusk, Ph.D. a one-page letter opposing annexation, June 5, 2000.
140. Richard and Diana Walrath, a one-page letter opposing annexation, June 5, 2000.
141. Cindy Argus, a one-page letter opposing annexation, June 5, 2000.
142. Craig Cutler, a one-page letter opposing annexation, June 5, 2000.
143. Joanne Cutler, a one-page letter opposing annexation, June 5, 2000.
144. Bob and Anne Haynes, a one-page letter opposing annexation, June 4, 2000.
145. Mark P. Kinney, a two-page letter opposing annexation, June 5, 2000.
146. Michael A. LeMay, a three-page letter and one page attachment opposing annexation, June 5, 2000.
147. Paul Morton, a three-page letter opposing annexation, June 3, 2000.
148. Geoffrey Olson, a one-page letter opposing annexation, June 4, 2000.
149. James and Janice E. Preston, a one-page letter opposing annexation, June 5, 2000.
150. Al and Marcia Veldstra, a one-page letter opposing annexation, June 5, 2000.
151. Tom Wallace, a one-page letter opposing annexation, June 5, 2000.

152. Dale Banks, a two-page letter opposing annexation, June 6, 2000.
153. Jane Beck, a one-page letter opposing annexation, June 5, 2000.
154. Tom Beck, a one-page letter opposing annexation, June 5, 2000.
155. Daisy Lee Bitter, a two-page letter opposing annexation, June 6, 2000.
156. John Fejes and Michele Bournonville, a one-page letter opposing annexation, June 5, 2000.
157. Ed and Elsie Cooley, a one-page letter opposing annexation, June 6, 2000.
158. Joel Cooper and Marla McPherson, a four-page letter opposing annexation, June 5, 2000.
159. Charles H. Davis, Jr., a one-page letter opposing annexation, June 5, 2000.
160. Lynda Haynes, a one-page letter opposing annexation, June 5, 2000.
161. Leah (undecipherable), a one-page letter opposing annexation, June 5, 2000.
162. Bill Noomah, a two-page letter expressing concern about aspects of the proposed annexation, June 5, 2000.
163. Craig Phillips, a seven-page letter opposing annexation, June 5, 2000.
164. Paul and Nancy Raymond, a two-page letter opposing annexation, June 5, 2000.
165. Chris Rideout, a one page informal petition signed by 11 Crossman Subdivision residents proposing requirements and conditions for annexation, June 5, 2000.
166. Steve and Margret Seelye, a one-page letter opposing annexation, June 1, 2000.
167. Richard W. Tyler, a two-page letter and one page attachment opposing annexation, June 5, 2000.
168. Geo Beach & Sydney Webb, a four-page letter opposing annexation, June 5, 2000.

“AOA” refers to Alaskans Opposed to Annexation (sometimes spelled “Alaskan’s Opposed to Annexation”) a respondent in the proceedings regarding the March 2000 City of Homer annexation proposal. AOA was also an appellant in the litigation challenging the LBC decision to approve annexation to the City of Homer.

“Areawide” means, in general terms, the entire area within the boundaries of a borough, both inside and outside all cities in the borough. (AS 29.71.800.)

“Assembly” means, generally, the governing body of a borough. (AS 29.71.800.) In this case, it may refer to the governing body of the Kenai Peninsula Borough.

“Borough” means a general law borough (first-class, second-class, or third class), a non-unified home-rule borough, or a unified home-rule borough (unified municipality). (3 AAC 110.990(1).)

In the most general sense, the word 'borough' means a place organized for local government. Boroughs exist in certain other states in this country and in other countries; however, they bear no similarity to boroughs in Alaska.

After much debate, Alaska's Constitutional Convention Delegates chose the term "borough" over alternatives such as county, canton, division, and province. They did so because they felt that the term borough did not carry the connotations of the other terms. The Delegates wanted to preclude rigid thinking and the application of restrictive court decisions based on the extensive body of county law developed in the existing states. (See, Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska*, 1971, p. 37.)

In Alaska, a borough is a regional unit of municipal government (See, Victor Fischer, *Alaska's Constitutional Convention*, 1975, pp. 116 – 123); Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska*, 1971, pp. 37 – 41; *Mobil Oil v. Local Boundary Commission*, 518 P.2d 92, 100 (Alaska 1974); and Alaska State Legislature, Legislative Counsel, *Proceedings of the Alaska Constitutional Convention*, 1963, pp. 2638 and 2641.) In this proceeding, the term "Borough" may refer specifically to the Kenai Peninsula Borough.

"CCAA" refers to Kachemak Area Coalition, Inc., doing business as Citizens Concerned About Annexation. CCAA was a respondent in the proceedings regarding the March 2000 City of Homer annexation proposal. CCAA was also an appellant in the litigation challenging the LBC decision to approve annexation to the City of Homer.

"CDP" refers to census designated place.

"Chart" means a map on which specific information, such roads and boundaries are plotted, graphs, or tables.

"Cherry-picking" means choosing what is most beneficial to one from a range of available options/products, etc. At the most obvious (but unlikely level), a vegetable vendor may say: 'You can't cherry-pick. Take it as it is.' While taking over a company, you may have to take it as it is and not cherry-pick its best assets.

"City" means a general law (first-class or second-class city or a home-rule city government. (AS 29.71.800.) It is a municipal corporation and political subdivision of the State of Alaska. In this proceeding, the term "City," where used as a proper noun, typically refers to the City of Homer.

"City of Homer" is a first class (general law) city incorporated in 1964. The current boundaries of the City of Homer encompass an estimated 25.58 square miles. The City of Homer initiated the March 2000 Petition for annexation of 25.64 square miles.

"City of Kachemak" is a second class (general law) city incorporated in 1961. The corporate boundaries of the City of Kachemak encompass an estimate 1.83 square miles. Portions of the boundaries of the City of Kachemak adjoin portions of the boundaries of the City of Homer.

"Coastal resource service area" means a service area established and organized under AS 29.03.020 and AS 46.40.110 - 46.40.180. (3 AAC 110.990(2).)

“Commission” refers to the Local Boundary Commission. (3 AAC 110.990(3).)

“Community” means a social unit comprised of 25 or more permanent residents as determined under 3 AAC 110.920. (3 AAC 110.990(5).)

“Contiguous” means, with respect to territories and properties, adjacent, adjoining, and touching each other. (3 AAC 110.990(6).)

“Council” means the governing body of a city. (AS 29.71.800.)

“DCCED” means the Alaska Department of Commerce, Community, and Economic Development (the Department of Community and Economic Development will be renamed as DCCED on September 2, 2004).

“DCED” means the Alaska Department of Community and Economic Development.

“Department” means the Alaska Department of Community and Economic Development.

“Department of Community and Economic Development” means the State agency that serves as staff to the Alaska Local Boundary Commission and also serves as the local government agency mandated by Article X, Section 14 of the Constitution of the State of Alaska.

“General law municipality” means a municipal corporation and political subdivision of the State of Alaska that has legislative powers conferred by State law; it may be an unchartered first-class borough, second-class borough, third class borough, first-class city, or second-class city organized under the laws of the State of Alaska. (AS 29.04.020.)

“GIS” refers to the Geographic Information Systems of the Kenai Peninsula Borough.

“Homer Annexation Website” refers to the Website maintained by DCED that relates to the March 2000 annexation proposal. The Website address is: <<http://www.commerce.state.ak.us/dca/lbc/homer.htm>>.

“Homer Remand Website” refers to the Website maintained by DCED that relates to the ongoing remand. The Website address is: <“Homer Annexation Website” refers to the Website maintained by DCED that relates to the March 2000 annexation proposal. The Website address is: <http://www.commerce.state.ak.us/dca/lbc/homer_annex_remand.htm>.

“ISEGR” refers to the former Institute of Social, Economic and Government Research at the University of Alaska. It is now named the Institute of Social, Economic and Government Research or ISER.

“ISER” refers to the Institute of Social, Economic and Government Research.

“Kachemak Emergency Service Area” refers to a Kenai Peninsula Borough service area.

“Kenai Peninsula Borough” is a second class (general law) borough incorporated by legislative fiat on January 1, 1964. The Kenai Peninsula Borough was a Respondent in the original annexation proceedings.

“KESA” means the Kachemak Emergency Service Area.

“KPB” refers to the Kenai Peninsula Borough.

“LBC” refers to the Alaska Local Boundary Commission.

“Local Boundary Commission” is the independent commission established under Alaska’s Constitution (Article X, Section 12) to render judgments regarding proposals to alter municipal boundaries. The Local Boundary Commission is one of only five boards of the State of Alaska with constitutional origins.

“Millers Landing” refers to the estimated 0.26 square mile territory along East End Road and Kachemak Drive bordered on the north by the City of Kachemak and to the south by City of Homer. The territory was also sometimes referred to in the original annexation proceedings as the “Triangle Area” or “No Mans Land”. It is also listed in the 2000 Census as the “Miller Landing Census Designated Place” (i.e., no “s” on “Miller”).

“Merger” means dissolution of a municipality and its absorption by another municipality. (AS 29.71.800.)

“Municipality” means a political subdivision incorporated under the laws of the state that is a home-rule or general law city, a home-rule or general law borough. (AS 29.71.800.)

“Nonareawide” means throughout that portion of a borough outside the boundaries of all city governments within the borough. (AS 29.71.800.) With respect to the Kenai Peninsula Borough, the nonareawide territory is that portion of the borough outside the corporate boundaries of the City of Seldovia, City of Homer, City of Kachemak, City of Seward, City of Soldotna, and City of Kenai.

“Permanent resident” means a person who has maintained a principal domicile in the territory proposed for change under this chapter for at least 30 days immediately preceding the date of acceptance of a petition by the department, and who shows no intent to remove that principal domicile from the territory at any time during the pendency of a petition before the Commission. (3 AAC 110.990(10).)

“OAR” refers to the Objective Annexation Review, a respondent in the March 2000 annexation proceedings.

“Petition” refers to the March 20, 2000 proposal for annexation entitled *A Petition by the City of Homer for Annexation to the City of territory West, North & East of the current City Limits*. The Petition sought annexation of an estimated 25.64 square miles under the legislative review method authorized by Article X, § 12 of the Constitution of the State of Alaska, AS 29.06.040(b), and AS 44.33.812(b)(2).

“Petitioner” refers to the City of Homer.

“Political” means pertaining or relating to the policy of the administration or government. Pertaining to, or incidental to, the exercise of the functions vested in those charged with the conduct of government; relating to the management of affairs of state; as political theories; or pertaining to exercise of rights and privileges or the influence by which individuals of a state seek to determine or control its public policy; having to do with organization or action of individuals, parties or interests that seek to control appointment or action of those who manage affairs of a state. (Blacks Law Dictionary)

“Political subdivision” means a borough or city organized and operated under state law. (3 AAC 110.990(11).)

“Property owner” means a legal person holding a vested fee simple interest in the surface estate of any real property including submerged lands; *“property owner” does not include lienholders, mortgagees, deed of trust beneficiaries, remaindermen, lessees, or holders of unvested interests in land.* (3 AAC 110.990(12).)

“Reply Brief” refers to the reply brief filed by the Petitioner with the Local Boundary Commission pursuant to 3 AAC 110.490 on September 11, 2000.

“Respondents” refers to the fourteen parties who filed formal Responsive Briefs in the original annexation proceeding by the deadline of June 5, 2000. Those were:

- Alaskans Opposed to Annexation;
- Doris Cabana;
- Sallie Dodd-Butters;
- Abigail Fuller;
- Mary Griswold;
- Dr. Vi Jerrel;
- Kachemak Area Coalition, Incorporated, d/b/a Citizens Concerned About Annexation;
- Kenai Peninsula Borough;
- Objective Annexation Review;
- Peter Roberts;
- Steve and Margret Seelye;
- Bill Smith;
- The Crossman Ridge Neighborhood Association; and
- Raven Ridge Homeowners Association.

“Responsive Brief” refers to any of the fourteen briefs filed with the Local Boundary Commission in the original proceeding pursuant to 3 AAC 110.480.

“REAA” means “regional educational attendance area.”

“Regional educational attendance area” means an educational service area established and organized under AS 14.08.031 and AS 29.03.020. It is a school district that provides education services to that portion of the unorganized borough outside of home-rule and first-class cities.

“Service area” refers to an area in which borough services are provided that are not offered on an areawide or nonareawide basis, or in which a higher or different level of areawide or nonareawide services are provided; borough service areas are not local governments, they lack legislative and executive powers; nonetheless, borough service areas are local governmental *units* in the context of the minimum of local government units clause found in Article X, § 1 of Alaska’s Constitution.

“State” where capitalized, refers to the State of Alaska government (i.e., the corporation; where not capitalized, refers to the geographic area within the corporate boundaries of the State of Alaska.

“Unorganized borough” means areas of Alaska that are not within the boundaries of an organized borough. (AS 29.03.010.)

